

June 26, 2007



TRANSCRIPT
June 26, 2007

MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Marilyn Praisner, President	Councilmember Michael Knapp, Vice-President
Councilmember Phil Andrews	Councilmember Roger Berliner
Councilmember Marc Elrich	Councilmember Valerie Ervin
Councilmember Nancy Floreen	Councilmember George Leventhal
Councilmember Duchy Trachtenberg	



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1 President Praisner,
2 Good morning, ladies and gentlemen. Welcome to the Tuesday, June 16, meeting of
3 the County Council and would you please rise for invocation by Chaplain Glenn Calkins,
4 Shady Grove Adventist Hospital.

5
6 Chaplain Calkins,
7 Let us be in the spirit of inspiration and prayer as we each call it. We are gathered on
8 this bright summer day representatives of our Montgomery County people. Help us
9 serve with a sense of pleasure and responsibility. Help each of us to reach deep within
10 ourselves to call upon inspiration to maintain the tension between pleasure and
11 responsibility that is creative. Help us reach beyond ourselves to appreciate power,
12 dignity, values, and beliefs and faith beyond ourselves that inspire us. May our
13 ministrations and creations this day serve our citizens and communities. We offer these
14 thoughts in the spirit that many of us call the inspiration and presence of God, knowing
15 that we approach that power within and beyond us by the same desire and by different
16 holy names. Amen.

17
18 President Praisner,
19 Thank you. Announcements, calendar changes, Madam Clerk?

20
21 Ms. Lauer,
22 We do have a couple of changes this morning on the agenda. One item that is on your
23 consent calendar will be pulled off and discussed immediately after consent calendar.
24 And that has to do with the abandonment of the Blazedale Road in Bethesda. A
25 legislative session - we just need to change - we're changing the hearing date for
26 Expedited Bill 14-07. The hearing date now will be July 10th at 1:30. And just one
27 announcement, we have an additional PHED meeting scheduled; it will be as soon as
28 the Council session is completed, the PHED will conduct a discussion of Bill 7-07 on the
29 tenant displacement. Thank you.

30
31 President Praisner,
32 That's this morning part of the Council Imeeeting.

33
34 Ms. Lauer,
35 Yes, I'm sorry (inaudible) this morning's session. And there are no petitions this week.

36
37 President Praisner,
38 Thank you. Madam Clerk, are there any minutes?

39
40 Council Clerk,
41 Yeah, the minutes of June 11th and 12th, and the closed session minutes of May 8th for
42 approval.

43
44 President Praisner,



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1 Is there a motion?

2
3 Councilmember Andrews,
4 Move approval.

5
6 President Praisner,
7 Councilmember Andrews moves approval. Is there a second?

8
9 Vice President Knapp,
10 Second.

11
12 President Praisner,
13 Council Vice President Knapp. All in favor of approving the minutes? That is unanimous
14 among those present. We now move to the consent calendar. Want to note that we
15 have pulled Item E for a separate discussion, but we have the consent calendar in front
16 of us, Items A through D and F through J. Is there a motion?

17
18 Councilmember Floreen,
19 (Inaudible)

20
21 President Praisner,
22 Councilmember Floreen. Is there a second?

23
24 Councilmember Andrews,
25 Second.

26
27 President Praisner,
28 Councilmember Andrews. Phil, you'd like to speak on something; go ahead.

29
30 Councilmember Andrews,
31 Thank you, Madam President. I want to speak briefly on item A, which is the receipt and
32 release of the Office of Legislative Oversight's report. Base budget review of the
33 Montgomery County Fire and Rescue Services was the second report they did on a
34 base budget. And this was specifically looking at what are called the net annual work
35 hours for the fire service. And this is critical to do in order to understand how many
36 personnel it takes to staff a position 24/7. So the factoring in is done of different leave,
37 training requirements and so on to see what the factor is you need to know. How many
38 people do you need to cover a position 24/7? The answer is basically 4.5 given the
39 number of training requirements and other things that take people out of regular
40 assignments. This is essential in getting a handle on overtime because unless you have
41 staffing up to that level of four and a half people per full-full, 24/7 position, you're going
42 to have to use overtime to make up the difference. So that's why this is important to
43 know in terms of figuring out what you need for funding for the Fire and Rescue Service
44 and what the appropriate staffing overall is. So I want to thank the Office of Legislative



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1 Oversight for another excellent report. We look forward to discussing it in the Public
2 Safety Committee and looking at potential recommendations in order to implement
3 some of the findings and recommendations. But I will note that the Fire Service has
4 been using a shift-relief factor very close to what OLO determined is the appropriate
5 one. There will not likely be major changes in terms of personnel needed in order to
6 fulfill it. There was a finding that in terms of paramedics the shift-relief factor is higher
7 than it is for other personnel. In other words, there are more training requirements, there
8 is more down time in that position, so there may need to be some changes there. But
9 overall the Fire Service is pretty close in terms of using the right calculation for
10 determining how to minimize overtime for regular staffing. Thank you.

11
12 President Praisner,
13 Councilmember Floreen.

14
15 Councilmember Floreen,
16 Thank you, Madam President. I just wanted to express my appreciation to the MFP
17 Committee for their support of my effort to establish a working group on infrastructure
18 financing. It's been an interesting conversation. And this has evolved from being solely
19 transportation focused to being broader based. But I'm very glad that we are acting on
20 this today. I think we're going to have extraordinary assistance now from the public in a
21 non-controversial setting to give us advice as to what infrastructure financing solutions
22 might be out there that we haven't considered to look at what we've done so far, I hope.
23 And to urge us onward to rational reasoned and thoughtful solutions as we confront our
24 challenges of trying to get roads and transit underway, as well as looking at our
25 variegated infrastructure needs across the County. So I thank the committee. I
26 appreciate the timeframe that's been adjusted to get a report back to us in September,
27 and I think that will put us in a great position in terms of advocacy, if that's necessary at
28 the state level, and certainly planning locally as we work through the next Capital
29 Improvements Budget. So my thanks to the committee for getting this out here, and my
30 thanks to the colleagues who have signed on and have worked so hard for this.

31
32 President Praisner,
33 Thank you for your leadership on the issue. Councilmember Berliner.

34
35 Councilmember Berliner,
36 I just wanted to also commend Councilmember Floreen for her leadership on this and
37 her flexibility insofar as this matter was originally put forth focused entirely on
38 transportation projects and at the urging of the committee and the larger conversation
39 about the need for capitol infrastructure more broadly recognizing that this was a larger
40 conversation and your willingness to embrace that larger conversation. So I thank you
41 for your flexibility on that point.

42
43 President Praisner,
44 Councilmember Andrews.



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Councilmember Andrews, Aron Trombka and Rick Romer are in the room with us, and I want to thank them for a good report. And the Public Safety Committee will have a work session on this on July 5th.

President Praisner,

I wanted to make one comment as well on the infrastructure and financing. I think the timing of the information will provide us with good information that we may be able to share with other counties in the state of Maryland as well to the extent that suggestions from the working group highlight items for which we or other jurisdictions do not have authority at this point in time. The other point I'd make is as I was listening to the radio coming in this morning, there was significant discussion about the northern Virginia efforts, including a variety of fees and measures that they intend to use to jumpstart and to implement some transportation projects. The key point there being made is that you can't jumpstart anything if it isn't planned and designed. And that one of the key hurdles is the process of getting these things ready whether it is a recreation center where a site is still needed, or a road improvement or a transit right-of-way where we haven't finalized those issues. So while we need to look for the money, we also have to have the plans in place; and I think it's imperative for us to work on both fronts in a very aggressive perspective. Councilmember Floreen.

Councilmember Floreen,

Thank you, Ms. Praisner, for mentioning that. I did look at their list that was in the paper today. And I thought to myself well we have spent a number of years trying to push forward these planning efforts, certainly on the transportation front, and probably where we are lagging is in some of the other areas where the challenge of sorting priorities and locations continues to be a challenge. But it's an interesting parallel, and at least I for one am glad that the conversation is front and center throughout the region. And no doubt we can all steal a few ideas from each other as we work through this.

President Praisner,

Absolutely. The consent calendar minus the one item, which we will discuss separately - Item E is before us. All in favor of approval? That is unanimous. Councilmember Elrich walking out the door. Okay, we'll now go to -- .

Councilmember Leventhal,
(Inaudible).

President Praisner,
Yes, George.

Councilmember Leventhal,
Point of personal privilege. Could I be recorded in the affirmative on the minutes earlier this morning?



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1
2 President Praisner,
3 Certainly.

4
5 Councilmember Leventhal,
6 Thank you very much.

7
8 President Praisner,
9 We'll now move to Item E. And I would ask the T&E Committee and Mr. Orlin to bring us
10 the presentation and recommendations from the committee on this issue.

11
12 Councilmember Floreen,
13 Thank you, Madam President. The T&E Committee was the one group that didn't
14 support the proposed abandonment in this case. This is a neighborhood request to not
15 construct what is left of a street -- a road in Bethesda. I think the -- I think the challenge
16 for us -- and it was just myself and Mr. Leventhal; Ms. Ervin was unavailable that day.
17 Our concern really was two things: one abandonment of this roadway as proposed
18 would leave one property without meeting the required frontage -- would leave one
19 property without the required frontage under the law. And it troubled us that no one had
20 noticed that through the abandonment process. So Mr. Orlin had recommended that if
21 this went through that the distances would have to be altered to satisfy that requirement.
22 One of the challenges with this situation is that there is a piece of property that fronts on
23 this right-of-way that could carry a home. And the property owner and some other folks
24 raised this issue apparently before the Hearing Examiner. The other issue was that this
25 proposed solution to neighborhood access would be an easement on private property to
26 be retained over time so that if the county wanted to proceed with the kind of
27 interconnectivity activity of pathways or trails, much in the manner as Ms. Trachtenberg
28 has suggested in other arenas, that it would have to be located with the concurrence of
29 the property owners on private property. Based on our experience in other parts of the
30 County where easements for public access have been contested and difficult to
31 maintain; I'll note the one over by Spring Brook High School; at least my reaction was
32 this is a hard one to leave to the kindness of neighbors and better to just leave the right-
33 of-way as it is. There is no proposal nor do we support a proposal to build a road here.
34 No one is thinking about that. But given the issue of access and the need for potential
35 long-term pedestrian walk-ability and the like, it seemed to us unnecessary given a
36 driving desire or need to abandon the roadway. No one is opposing a road at this point
37 from the government's perspective, and no one is proposing the removal of a single
38 tree. It just did not seem to us to warrant further action. So the committee
39 recommendation is not to abandon a portion of the unapproved Blazedale Road.

40
41 President Praisner,
42 Okay, so the committee's recommendation is before us; Councilmember Leventhal.

43
44 Councilmember Leventhal,



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1 Yeah, I just wanted to concur with the Chair and layout my own thinking on this for the
2 benefit of my colleagues. This is not an easy call and it's a classic situation where no
3 matter where we vote, some constituents will be mad at us. The question that I've
4 always tried to focus on, on the County Council, is how is the public interest served by
5 the proposal that's before us? It's very clear to me if we concur with the Hearing
6 Examiner and grant the abandonment, the private interest of the property owners
7 immediately fronting the right-of-way is served. And their property value is significantly
8 enhanced. This would be substantial, I would use the word gift from the county to this
9 private property owners. And I certainly understand not only because of the enhanced
10 property value but because of their view shed and because of their peace and quiet why
11 they would want this abandonment to take place. And I understand that they have
12 persuaded their neighborhood association to go along with them. And I don't minimize
13 that. I think that's very important. So it is a close call. It is not a simple thing. The reason
14 I concur with the committee Chair on this issue is that by abandoning this right-of-way,
15 we are making a permanent decision that permanently forecloses the County's ability to
16 utilize this right-of-way or other property owners' ability to use the right-of-way even
17 though the property owners have indicated that they are willing to consider some
18 pedestrian access. As the Chair said it does become their land. We had some
19 discussion during the budget about improving pedestrian and bicycle connections
20 through residential neighborhoods. This would really not facilitate that goal if that were a
21 County goal. As the Chair said, at this moment the County is not proceeding with
22 bicycle access, any pedestrian access or anything else. So if we do not go along with
23 this abandonment nothing changes. This is not a change in status of the property; it just
24 continues fact that the County has an easement and the ability to utilize the easement
25 at some point in the future, but there's no proposal right now before us. If we vote for
26 the abandonment, it permanently settles the issue to the benefit of a relatively small
27 number of private property owners, and again in my judgment, that was not -- it was not
28 clear to me how the public interest was served in that regard. Let me just say I know the
29 property owners are here. This is not an easy call. I appreciate the concerns that
30 they've expressed, and I wish them nothing but the best. These are difficult policy
31 choices and judgments that we make, and I understand that some people in the
32 audience are disappointed with the decision of the committee, and we'll see what is the
33 sentiment of the full Council.

34
35 President Praisner,
36 Councilmember Berliner.

37
38 Councilmember Berliner,
39 Thank you, Madam President. I will be proposing that we approve the abandonment
40 with the conditions that staff has recommended, plus one additional amendment with
41 respect to a conservation easement that I think it would ensure that the trees in that
42 area are permanently protected. I have shared with my colleagues -- I didn't share with -
43 - you weren't here at the time. The chair of the committee hasn't seen that particular
44 document. But let me walk through with my colleagues why I believe this is in fact in the



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1 public interest, and as the District Council representative, why I reviewed this record
2 with great care in order to insure that I was in a position to offer whatever advice and
3 recommendation I could to my colleagues. One, I would observe the obvious. This has
4 been approved by the County Executive, the Planning Board, the Hearing Examiner,
5 and our own staff have unanimously said this is the right thing to do. Now
6 abandonments aren't an easy thing to do; you have to demonstrate that there is no
7 public need for this facility and that it's in the public interest. All of these people have
8 reached that conclusion. I see no reason to override that judgment based on an
9 evidentiary record that was presented before them. The abandonment would insure the
10 integrity of a neighborhood that for 66 years has existed with this present configuration.
11 And it's important. I urge you to take a look at it -- anyone -- I obviously know the area
12 and have driven by the area and can attest to what the Hearing Examiner said that this
13 is not a place where you want an intersection. And with all due respect, while people
14 have said that they don't propose an intersection in this moment, the land owner -- the
15 single land owner who has principally objected to this does in fact want access to
16 Burning Tree Road. That is what the Hearing Examiner report indicates, and that would
17 be a significant negative for the neighborhood, and would be a negative in terms of
18 public safety. It would be a very ugly intersection. The abandonment would insure the
19 trees are preserved, which is an important consideration. And let me just say this isn't
20 one neighbor versus one neighbor Mr. Leventhal alluded to. The community association
21 is unanimously in support of this but for literally one principle objector the person who
22 wants access to Burning Tree Road. Because access to Blazedale has been insured. In
23 fact what our staff has recommended was even diminishing the abandonment just a
24 little to make sure that that person gets proper access -- proper turnaround, proper
25 access. So the landowners' legitimate rights in this conversation have been more than
26 adequately protected. Let me just say that I am not privy as I know the President of the
27 Council is and the Chair has alluded to before, the concerns with respect to quote
28 private easements of this nature. And I would ask staff to comment on it. But what has
29 been proposed here is an easement -- a pedestrian easement that would insure that
30 you have not a paved road but a pedestrian access consistent with the quality of the
31 trees and the many little forest that exists there. So you get pedestrian access, the
32 homeowner gets the access that the homeowner requires; you have turnaround
33 capacity hammerhead style, as I believe the phase is. And you preserve the integrity of
34 a neighborhood. I'm saying to myself what is wrong with this picture? How is it that we
35 would overturn the conclusions of the County Executive, the Planning Board, the
36 Hearing Examiner and our staff? I don't get it. So I would just simply point out that the
37 Hearing Examiner concluded, and you can find this in your packet -- that "approving the
38 petition would clearly have a more environmentally beneficial impact since it would
39 prevent an increase in impervious surface and allow the existing tree cover to remain."
40 And his ultimate conclusion was that the "preponderance of evidence on the record
41 indicates that the right-of-way is not necessary for current or future public use. This is a
42 classic abandonment of the type that we typically approve, and I would ask for your
43 support with respect to this for my neighborhood. I see no larger public interest than that
44 of the neighborhood here. I, too, think one often has to weigh the larger public interest



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1 against some smaller, narrower interest. In this instance I confess I see the two as
2 synonymous that the neighborhood's interest in this is the public interest. So in the
3 absence of some overriding consideration based on the recommendations of all these
4 independent bodies who is have said to us this is the right thing to do, I would request
5 that we go forward and staff, if you would care to speak to the conservation easement
6 as well as the issue of the concerns with respect to enforcing private easements, I
7 would appreciate it.

8
9 Mr. Orlin,

10 Sure. First of all with the private easements; actually the Department of Public of Works
11 had recommended that a right-of-way of twenty feet be included rather than
12 appeasement. My recommendation was that it be an easement because it allows more
13 flexibility at the time that it's determined where it would go. If it's a right-of-way it means
14 that the actual planning would have to show that specific right-of-way in it. But frankly
15 that's a sticking point, that's not a really typical -- very important one if your preference
16 is to have it as a right-of-way rather than an easement. It's fine but there's really frankly
17 no reason why an easement can't be just as easily enforced as a right-of-way.

18
19 President Praisner,
20 Well (inaudible).

21
22 Mr. Orlin,
23 If it hasn't been done -- .

24
25 President Praisner,
26 Let me comment on that, Glenn, because reference was made to -- of situations with
27 which I am familiar. Let me also comment that the Planning, Housing and Economic
28 Development Committee has had several conversations with Park and Planning and
29 with others as well as my personal conversations about the problems we have with too
30 many easements out there that we don't even know where they exist, we don't know
31 how to enforce them, and the complications associated with that. That's makes me
32 wonder why Park and Planning would have even signed off on this given the challenge
33 of easements and abandonments and the complications that have continued to arise.
34 So they are not the same thing. They are not the same thing to enforce. And they are --
35 there is no database that exists at this point in time and no method for recording and
36 filing in a consistent manner all easements in the County that exist.

37
38 Mr. Orlin,
39 The Planning Board recommended a right-of-way; they did.

40
41 President Praisner,
42 Well then that's exactly why they did that then because there's a significant problem
43 with using easements all over the County for whatever purposes without follow through
44 and without consistency.



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1
2 Councilmember Berliner,
3 Could I reclaim my time for just a minute to follow up with staff on this point?

4
5 President Praisner,
6 Well, he was speaking; if you want to come back, sure, but I don't know if you're done,
7 Mr. Orlin.

8
9 Mr. Orlin,
10 Well I was done with that part of it you asked me that question with the forest
11 conservation (inaudible).

12
13 Councilmember Berliner,
14 Could I stop you there then to just further engage on this point?

15
16 Mr. Orlin,
17 Sure.

18
19 Councilmember Berliner,
20 Your response immediately was that in your professional judgment there was not a
21 significant difference with respect to a right-of-way versus an easement on this
22 particular parcel. Could you elaborate on that?

23
24 Mr. Orlin,
25 Legally there shouldn't be.

26
27 Councilmember Berliner,
28 Understood.

29
30 Mr. Orlin,
31 But if there's a problem -- if there's a problem in the real world in terms of how easy they
32 are to implement them, if the Council will to shore that up is to it should be a right-of-
33 way, then say it should be a right-of-way.

34
35 Councilmember Berliner,
36 All right. And in your judgment it would not make a material difference in terms of its
37 impact on the objective sought by the neighborhood with respect to this matter.

38
39 Mr. Orlin,
40 Either way it would be -- .

41
42 Councilmember Berliner,
43 Either way?



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1 Mr. Orlin,
2 Yeah.

3
4 Councilmember Berliner,
5 So it is indifference, you believe, that changing this would not have any material effect
6 on the community's objectives and would satisfy the Council President and others'
7 concern with respect to enforcement.

8
9 Mr. Orlin,
10 Yes.

11
12 Councilmember Berliner,
13 Well in that context then I would suggest that if to the extent -- .

14
15 President Praisner,
16 Right-of-way is retained by government; easement is a grant by a private owner of the
17 access. But the private owner owns the property.

18
19 Mr. Orlin,
20 The underlying (inaudible); that's right.

21
22 Councilmember Berliner,
23 Okay. In light of that, if there is concern among my colleagues with respect to that, then
24 I would be prepared to further amend it to include a condition that would transform the
25 easement into a right -of-way for this limited purpose.

26
27 Mr. Orlin,
28 And then there was the other question of (inaudible).

29
30 Councilmember Berliner,
31 So then there was a conservation easement.

32
33 Mr. Orlin,
34 Yeah. You're recommending, Mr. Berliner, that we add to the requirement a forest
35 conservation easement which would prevent trees from being taken down the right-of-
36 way. The way I draft this language for you this morning at your request, it doesn't
37 specify type-one or type-two, there are two different types of forest conservation
38 easements. I think that's best left -- .

39
40 Councilmember Berliner,
41 I think my colleagues might benefit from seeing the amendment as well (inaudible). I
42 know that they (inaudible) faith -- .

43
44 Unidentified,



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1 Just to detail.

2
3 Councilmember Berliner,
4 Just accept whatever I -- .

5
6 President Praisner,
7 Everybody else needs one.

8
9 Mr. Orlin,
10 What this does is - and this is the same clause -- let me explain. The resolution that
11 reflects what the Hearing Examiner recommended plus my recommendations is on
12 Circles 56, 57, 58. And the second part Action Clause number 1, if we get to that first,
13 refers to this strip. Now if this is draft in terms of an easement, we'll change it to a right-
14 of-way. Also it corrects a mistake that I made in the packet, which in my
15 recommendation I said agree with the Planning Board that this pedestrian strip should
16 be no more than 20 feet wide. In my commentary I felt if you're an unapproved path you
17 really don't need but to be consistent with the Planning Board, you can still say no more
18 than 20, but I put 10 in the resolution fortunately so this corrects that. When Mr. Berliner
19 (inaudible) is adding is the forest conservation easement, which again would preclude
20 the owners from building or from taking down trees in the right-of-way type one and type
21 two the difference is one you can't touch even the under-story, I would leave that to the
22 Planning Board in their -- when this project is, um, this property is -- if it's -- the
23 abandonment is approve if it goes back to the Planning Board, they will make a call as
24 to whether it should be type one or type two.

25
26 President Praisner,
27 Okay, we have quite a few lights so let me go to Councilmember Elrich.

28
29 Councilmember Elrich,
30 A couple of questions maybe, Glenn, you can help me with.

31
32 Mr. Orlin,
33 Sure.

34
35 Councilmember Elrich,
36 One is we're not adding sufficient square footage to any lot to allow an additional
37 subdivision of that lot are we?

38
39 Glenn Orlin,
40 Don't know.

41
42 Mr. Orlin,
43 I don't know. The intent of the -- the property owners have said what they're going to
44 split the property between themselves and the Brook's, which is next door.



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1
2 Councilmember Elrich,
3 Right.

4
5 Mr. Orlin,
6 Certainly I know the Brooks' property will not big enough to build a second house. And
7 certainly the intent of the current property owners is not to build a second house. But I
8 don't literally know whether or not it's big enough to build a second house (inaudible)
9 zoning.

10
11 Councilmember Elrich,
12 I just -- that I would be interested in some further amendment that would prohibit
13 somebody from acquiring land -- from using the additional square footage to allow them
14 to do a subsequent subdivision of their property. That is if they can only get one lot now
15 then I want to create a situation where we give away the land in the name of preserving
16 the forest and then somebody turns around and decides they now have enough land to
17 do a subdivision and get two lots out of it instead of one; that seems to be rather self-
18 defeating.

19
20 Mr. Orlin,
21 Let me clarify that. What you really mean is not enough to be able to add another
22 house.

23
24 Councilmember Elrich,
25 Yes.

26
27 Mr. Orlin,
28 Because they have to re-subdivide after this to change the lot line but I understand.

29
30 Councilmember Elrich,
31 But I don't want to -- you know what I don't want.

32
33 Mr. Orlin,
34 Right. Further clarification of what you don't want often times what happens -- the
35 reason why these abandonments are pursued, it's not the state of abandonment reason
36 in this case. But often times an abandonment is pursued not to build another house but
37 to add an addition to the side of the house because the side lot now is moved, or the
38 setback from the side yard is different. And is that a further preclusion you want to
39 make?

40
41 Councilmember Elrich,
42 I'll get to my second question. But my first one is I do want to preclude any subdivision
43 of the property for the purpose of creating an additional lot because we lose the ability
44 to protect what we say we're trying to protect. My second concern is why don't we



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1 extend the forest conservation over the entire land covered by what we're abandoning. I
2 mean it seems to me if the whole issue is that these people would be better stewards of
3 the land we're abandoning, why not ensure that by putting the forest conservation over
4 all of it so they can't -- nobody can go in and cut down trees. Because the way I read
5 this the only thing that would be covered would be the 20-foot strip, and if somebody
6 then wants to do excess -- no.

7
8 Unidentified,
9 No.

10
11 President Praisner,
12 No, it's the other way around.

13
14 Mr. Orlin,
15 It covers all of it. There are three (inaudible) now (inaudible) essentially three types of
16 easements; one is for public utilities and storm drainage; a second is for forest
17 conservation; and third, which will change, but in here it says -- shows an easement for
18 the path.

19
20 Councilmember Elrich,
21 So when it says for forest conservation that covers the entire portion of what we're
22 giving up.

23
24 Mr. Orlin,
25 Yes.

26
27 Councilmember Elrich,
28 Okay, I read those two together and I was concerned that the third one conditioned the
29 second one, but you said it doesn't.

30
31 Mr. Orlin,
32 It doesn't. You have the semicolons around it so.

33
34 Councilmember Elrich,
35 Okay, I guess question is about unimproved path. Is this going to be a path that's going
36 to be definable that people could actually see and use, or they just going to be like
37 you've got 20 feet in the forest to wonder in.

38
39 Mr. Orlin,
40 It's a right-of-way for an unimproved path, which to most people who follow this means
41 a dirt path.

42
43 Councilmember Elrich,



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1 Okay, I mean, I'm not opposed to some improvements to leave a path pervious, but I'm
2 concerned about what I have seen, for example, in some of Park and Planning's most
3 recent work where the construction of a 10-foot path cuts a 50-foot-wide swath through
4 an area apparently. I would hate to -- I don't want to go there, but I think any modern
5 improvements so people knew there actually was a path would not be a bad idea.

6
7 Mr. Orlin,
8 And that the way they intend to be -- of the applicants in the neighborhood as well.

9
10 Councilmember Elrich,
11 Well, I think I prefer -- .

12
13 Unidentified,
14 That was the intent.

15
16 Councilmember Elrich,
17 I do prefer the right-of-way solution and as long as we amend it with the preclusion of
18 future subdivision, I'd be happy with that also.

19
20 President Praisner,
21 Okay, Councilmember Leventhal.

22
23 Councilmember Leventhal,
24 Well I just want to point out a couple of things. A dirt path is accessible for able-bodied
25 pedestrians. It's not accessible for people in wheelchairs, and it is not accessible for
26 bicyclists, so I just want to make that point. The other point about the path is that I
27 understand it -- staff can correct me if I need to be corrected -- we are basically leaving
28 it up to the property owners to establish and maintain the path, so that if we abandoned
29 our right-of-way here that does not -- the government is not going to go in and construct
30 a path. We're saying maybe there will be a path. We count on the goodwill of the
31 property owners to have a path and maintain a path, and I have no reason to question
32 their good will. They're good people and I, again, I'm sorry that I find myself in
33 disagreement with them, but no one's actually going ahead and building a path at all.
34 And then the third point I would make is that whatever the good intent of the current
35 property owners, and again I have no reason to question their good intent -- current
36 property owners are not property owners forever, and we're making a permanent
37 decision here that cannot be reversed; whereas if we do not grant this abandonment
38 nothing changes. The status quo remains in place, but any future option is not
39 foreclosed. With respect to the views of the neighborhood association those too could
40 change some day. But if the composition of the neighborhood association changes
41 homes turnover and it may be that at some point a future neighborhood association
42 might have a different desire. If not for a road, which I understand raises concerns about
43 safety and access and all these other issues, perhaps for a path. And we would
44 foreclose the option to have certain types of paths. We would only have an unimproved



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1 path which, again, just to reiterate the point, would not be accessible for people in
2 wheelchairs or for bicyclists.

3
4 President Praisner,
5 Okay.

6
7 Councilmember Floreen,
8 If I might just comment.

9
10 President Praisner,
11 Yes, all other lights should be off at this point except for the committee Chair.
12 Councilmember Floreen.

13
14 Councilmember Floreen,
15 And it was for these reasons basically all of which have been articulated that the
16 committee did not recommend the abandonment. The challenge of maintaining an
17 access point at some point in the future; potential -- classic potential for re-subdivision,
18 I'm not sure how you can say that in a condition with respect to public right-of-way. And
19 the potential for further -- creating a larger lot that allows even bigger homes on an all --
20 in a community that already has large homes was part of the thinking that certainly led
21 us to say let's not go there on this so that's why the committee recommendation is what
22 it is.

23
24 President Praisner,
25 Okay, in order to deal with this in an orderly fashion, Councilmember Berliner has
26 indicated that he would like to, and he offered a substitute for the committee's
27 recommendation that would support the abandonment. Is there a second to
28 Councilmember Berliner's substitute motion?

29 Unidentified,
30 (Inaudible).

31
32 President Praisner,
33 All right it's been moved and seconded by -- that we would with modifications to the
34 resolution to approve the abandonment. All in favor of the substitute motion?
35 Councilmember Andrews, Berliner, Knapp and Elrich. Those opposed? Ervin,
36 Trachtenberg, Praisner, Leventhal and Floreen. The substitute motion fails; we're back
37 to the committee's recommendation to deny. All in favor of the committee's
38 recommendation? Ervin, Floreen, Trachtenberg, Leventhal, Knapp and Praisner. Those
39 opposed? Elrich, Andrews and Berliner. The abandonment is denied. I think this
40 discussion does lend a point that maybe the T&E may want to review in a global sense
41 about guidelines or perspectives that the Council may want to suggest to the agencies
42 as they review abandonment requests, especially as it relates to the issues of
43 easements, but not exclusively on that issue. Okay.



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1 Unidentified,
2 (Inaudible) Planning Board.

3
4 President Praisner,
5 Yeah. Okay. We are now to the Item 6. Only slightly behind, but that's fine. And this is
6 the action on appointments to the Montgomery County Planning Board. There are two
7 appointments that need to be made. The first is for the term of Wendy Collins-Perdue,
8 which can be held by either a Democrat or an Independent. And I would entertain
9 motions. Councilmember Berliner.

10
11 Councilmember Berliner,
12 Thank you, President Praisner. I would like to move the nomination of Gene Lynch, and
13 I'd like to be able to speak to it just for a moment.

14
15 President Praisner,
16 Go right ahead.

17
18 Councilmember Berliner,
19 We are fortunate in this instance as we often are to have had an incredible pool of
20 candidates to draw from. And I would like to share briefly why I ultimately concluded that
21 Gene was the best choice at the point in time. And I think fundamentally the conclusion I
22 reached was that Mr. Lynch is uniquely positioned to help us transcend the often
23 polarizing debate about how we manage growth in the County. He made one of his
24 initial contributions to our community through the civic world, and is grounded in a deep
25 appreciation of the impact the development has on our community. Yet, in that position
26 he was among leaders in our community that helped forge consensus around the future
27 of Silver Spring; a promising future that has now been significantly if not completely
28 realized. He has shown that he knows how to work with community members to achieve
29 a real-world result that works. By virtue of his work for County Executive Potter as his
30 CAO, he obviously has an intimate understanding of county government that will serve
31 him well. And a senior the staff to Governor Glenndening, he knows smart growth as
32 well as anyone. However in addition to Mr. Lynch's obvious intellect and his
33 understanding of public policy and political realities, he also has a firm grasp on
34 business realities. He is currently in the development world working with communities
35 on smart-growth proposals and working with the financial committee on financing
36 projects. He understands real-world economics. In short, we have a candidate who
37 combines civic commitment with a hardnosed business background, a public policy
38 wonk with a demonstrated ability to help create real-world on-the-ground solutions.
39 Before closing, let me say a word or two about one other candidate that I thought was
40 terrific and that is Tedi Osias. She is smart, committed, knowledgeable and importantly,
41 a very good person. It was a difficult call as between them, and I think she would make
42 an excellent member of the board. And sometimes in life and often in government you
43 have to make difficult choices. This was one of them. In the end I concluded that the



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1 diverse background that Mr. Lynch brings to this position was the right mix at this
2 moment in time. And I am accordingly pleased to commend him to my colleagues.

3
4 President Praisner,
5 Thank you. Councilmember Ervin.

6
7 Councilmember Ervin,
8 I am proud and delighted to nominate Tedi Osias for the Planning Board. As a former
9 member of the Chevy Chase Village Council, she was responsible for enforcing town
10 ordinances and building codes. This experience taught Ms. Osias how to make difficult
11 decisions and how to deal with criticism. Furthermore, Ms. Osias knows Montgomery
12 County. She has devoted much of her life to public service and has lived in the county
13 for nearly 40 years. I believe that her experience as a land use and transportation
14 planner combined with her county government service and time spent as an elected
15 official has prepared her to serve the County as a member of this Planning Board. As a
16 director of legislative and public affairs at the Housing Opportunities Commission, she
17 advocates for affordable housing and equal access. Ms. Osias also serves as an
18 independent member of the Commission for Women, and is a graduate and board
19 member of Leadership Montgomery. Ms. Osias is an active listener who knows how to
20 build consensus. Her balanced analytical approach to decision making would enhance
21 the Planning Board, and her selection would maintain the balance of women serving on
22 the board. I believe that Ms. Osias has more direct experience with the Planning Board
23 than any of the other candidates. And on balance, I believe that she is the best
24 candidate. In addition to all of her service, Tedi has an optimistic, positive outlook, and
25 in my opinion, is an audacious leader. At a time when many people view public service
26 with an eye towards cynicism, she won't forget those who are voiceless. Her service on
27 HOC grounds her in the reality of those who struggle every day to obtain the most basic
28 human right -- the right to a home. The great Dr. Cornel West wrote: "The values like
29 love and care and concern for others, and values like solidarity and community and
30 fidelity and loyalty are the values and traditions that have made our country great." Tedi
31 exemplifies all of these values. We have an opportunity today to appoint a woman who
32 lives these values every day. Based on these factors, I nominate Tedi Osias to serve on
33 the Planning Board. Thank you.

34
35 President Praisner,
36 Councilmember Floreen.

37
38 Councilmember Floreen,
39 I'm going to second Valerie's nom -- .

40
41 President Praisner,
42 There are no seconds necessary.

43
44 Councilmember Floreen,



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1 Well I would like to make a comment then.

2
3 President Praisner,
4 Sure (inaudible).

5
6 Councilmember Floreen,
7 But I second it anyway. Regardless, I wanted to make two comments about Tedi.
8 Valerie has summarized her qualifications tremendously. But I do want to say if Tedi's
9 crime in putting her name out there is that she's an advocate for affordable housing, I'm
10 with her. This Council has repeatedly in nearly every conversation about growth, about
11 development, about whatever, includes the line affordable housing. I think it's time to
12 have someone who's demonstrated a commitment to affordable housing on the
13 Planning Board that is in the trenches making hard decisions like right-of-ways and
14 details of community on a weekly basis. If we're really committed to that initiative, I do
15 think we have to put people in place that we are confident will address that issue. And
16 the other thing I would say is that I have the tremendous amount of respect for Gene
17 Lynch in terms of his capacity, intelligence and commitment. But I will say he is the one
18 candidate who has the most potential for conflict of interest of any of the folks that we
19 interviewed. Because of his engagement in the financial arrangements of development
20 up and down the east coast, he has the potential to affect the transfer of money in a
21 way that the rest of us could never begin to follow. And he's going to continue to do that
22 work and I think that is a bigger cause for concern than the fact that someone is an
23 advocate for a policy that we all espouse. So with that, I'm very supportive of Tedi's
24 application. I hope our colleagues will join in.

25
26 President Praisner,
27 Councilmember Leventhal.

28
29 Councilmember Leventhal,
30 I will cast my vote when it comes to a vote. I just want to say I have very high regard for
31 both of these candidates who have been nominated. I have worked with both of them
32 over a number of years. And I have very high regard for several of the other applicants.
33 We had a good field of Democratic applicants. Alan Bowser has extensive civic
34 experience and I think has a bright future in county politics. Bob Cope has many, many
35 years of advocacy for the citizens of his part of the county and a broad knowledge of the
36 rest of the county. Bob Mitchell has adhered to the highest practices -- best practices in
37 the home building industry, and I think would bring -- although no one is nominating him
38 here today -- an important perspective to the Planning Board. So we are very fortunate
39 to choose from a number of outstanding community advocates. I have heard an awful
40 lot in the negative column about both of our two nominees today. And I'm sorry about
41 that. I think very highly of both of them. And I'm sorry to have learned some of the things
42 that I learned. And I just hope that we will continue to appreciate and respect people
43 who devote their careers to public service. We all -- all of us who have a record in the
44 public arena make decisions that some folks disagree with; I'm sorry that this



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1 appointment has become as polarized as I view that it has. I have a high regard for both
2 of these candidates. I believe that we would be well served by either one of them. I just
3 want to take the opportunity to say that although I regret some of the tone of the
4 advocacy that I have heard against both candidates, I understand the reasons why. The
5 reasons why are because we make this appointment as a pivotal time for the
6 Montgomery County -- for the Maryland National Capital Park and Planning
7 Commission. This is a troubled agency. This is an agency that needs strong, visionary,
8 conscientious leadership. And I just hope -- and I've expressed this to both candidates
9 that whichever one of them wins this vote that they will avoid the two perils that trouble
10 me the most about the Montgomery County Planning Board, and I'm just going to put
11 this on the record; and those are arrogance and insularity. We have a huge
12 constituency here. We have nearly a million people who are significantly affected by
13 decisions of this Council and decisions of the Planning Board with respect to what our
14 future will be like; how healthy will our economy be; what will be the nature of the
15 composition of our housing and our job market? And we need to take into account the
16 views of a broad range of residents. And I'm quite confident that both -- that either Tedi
17 or Gene or Gene or Tedi -- I'm not -- in either order -- understand that. And I've
18 expressed that very strongly to them. We need a new look Planning Board. We need a
19 Planning Board that takes it responsibility to listen actively to the concerns of all
20 residents of Montgomery County very, very seriously. And I'm going to continue to be in
21 close touch with commissioners and with my constituents because this is a board that
22 needs a lot of interaction, and we've got to get it back on track. And I will appreciate the
23 opportunity to work with either of these two good people. And I have the highest regard
24 for both of them.

25
26 President Praisner,

27 There are still Councilmembers who have not spoken that I will call on. Councilmember
28 Andrews.

29
30 Councilmember Andrews,

31 Thank you, Madam President. I recall a couple years ago we had a screening
32 committee to pick -- recommend a new inspector general for the County. And we had
33 two sitting federal inspector generals volunteer to serve on that screening committee,
34 which is illustrative of the one of the great things about this County is the talent that we
35 have in it, and what is good for the public sometimes presents a challenge up here
36 because we have great choices before us and the challenge then is to pick the
37 strongest of the strong. And that's a good challenge to have. I think you could put
38 together a good planning board from five from this field. In fact, you could fill an entire
39 new planning board with the candidates that we have. But we have two appointments
40 today. And for this position I think the strongest of the strong is Gene Lynch. And so I'm
41 going to support his nomination for many of the reasons that Councilmember Berliner
42 outlined. I think he's exceptionally well qualified. I think he understands the County well.
43 He has experience that is unmatched at both the state and the county level. He has
44 been a long time community activist committed to the county, which is true for many of



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1 the other applications as well. But I do think that overall he is the strongest of the strong,
2 and so I'm going to support him. I also view him as a future potential Chair of the
3 Planning Board, and I think that's an important consideration in our thinking about these
4 appointments.

5
6 President Praisner,
7 Councilmember Elrich.

8
9 Councilmember Elrich,

10 I myself have no opinion about a future Chair of the Planning Board. Think it's
11 premature to be thinking about that I hope. I'm going to find myself supporting Gene.
12 But I want to say that I thought there were some other exceptional candidates. And I
13 thought Alan Bowser and Bob Cope would have made exceptional members of the
14 Planning Board. And I think that both of them would have brought a level of
15 independence that would have been welcome. And some people have alluded to the
16 negative campaign and I'm not quite sure I've sorted through what's real and what's not
17 in all the things that have been said about everybody. But I do think that, you know,
18 there are issues of concern that will need to be addressed and thought about very
19 clearly by either of the two candidates that have really been put forward now. And my
20 feeling was in trying to garner support for either Allen or Bob was that the Planning
21 Board having struggled and Planning Commission in general having struggled under the
22 cloud of Clarksburg and every thing else for the time that it's been struggling with it
23 would have benefited from appointees who didn't come into it even with the hint of a
24 cloud trailing behind them. And I find concerns within the conflict concerns, I think with
25 both the leading candidates. That said, I think -- I don't worry about Gene being
26 powerful enough to affect the transfer of money in the County in a material way. I've
27 known Gene for a long time; he's not that powerful. And he's not going to change with
28 the money flow in Montgomery County. I think if he could have done that, he would
29 have done it already. He doesn't need to be on the Planning Board to do that. Neither
30 do I think that the issue with Tedi is the crime of affordable housing. This Council or this
31 County talks much too much about what it does for affordable housing and what we do
32 doesn't match the problem out there. So to cast this as a vote for or against affordable
33 housing given the limited stuff that we do in this County compared to the need in this
34 County is just -- it's way out of proportion. The real decisions about affordable housing
35 will be made by this Council. We're talking about, you know, the margins of
36 development. You know the next 10% or 15% of growth in this County. We've got a
37 policy which is going to get you 12.5 or 15% MPDU's out of all of what's left. The real
38 issue is what we're going to do about the housing that's on the ground and the people
39 who live in it today on the ground. And that's not so much a Planning Board issue, it's
40 fundamentally a Council issue; what we're willing to invest in and what kind of laws
41 we're willing to do to support the people that live in that housing. And I have yet to see,
42 you know, the discussion really get down to how are we going to deal with the shrinking
43 stock of affordable housing in the County, and what are we will to do to do something
44 about that. So to me this is not an affordable housing issue. I thought of all the people



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1 we heard answer questions, Gene distinguished himself as the most knowledgeable of
2 all the candidates. I don't agree with him about everything, but I thought that his -- the
3 breadth of his answers and his ability to discuss things was even better than the
4 candidates that I prefer. And if I was looking at this solely on the basis of who had the
5 most knowledge, I think Gene is probably the hands-down winner in that regard. So I
6 will happily cast my vote for Gene. But I think that whoever becomes the next Planning
7 Board Chair -- Planning Board Member has to be critically aware of the kind of concerns
8 that come with this appointment. The issues that George raised about being insular and
9 arrogant, I mean we hear that far too much in discussions about the Planning Board and
10 I think there's a real need for whoever the new members are to take that to heart and to
11 set a different tone and, hopefully, be part of setting a different tone on the Planning
12 Board that our residents will be more appreciative of.

13
14 President Praisner,
15 Councilmember Trachtenberg.

16
17 Councilmember Trachtenberg,

18 Again, I'm going to echo some of what my colleagues have said about the array of
19 candidates that applied for the two openings on the Planning Board, and we are very
20 blessed, there is no question about that. I, from the beginning though, have always
21 looked upon Mr. Lynch as a really good candidate for the board, and for a number of
22 reasons. Not just because of the breadth of his experience, which Councilmember
23 Berliner did an excellent job describing to all of us those experiences around the
24 preservation of open space and affordable housing as a priority and clearly also the
25 values of smart growth and the importance as we continue to grow as a County I feel
26 that Gene has been very direct with me and with everyone else up here about his
27 development interest. And I have appreciated his candor in the conversation that we
28 had with him a few weeks ago and asked some very direct and pointed questions about
29 potential conflict. But I know I speak for many people when I say that Gene is a man of
30 great integrity and someone who clearly has demonstrated long-term commitment to
31 our community, and he has a knack for bringing people together. In fact, one of the
32 things that I would say he brings to the Planning Board is the fact that you can discuss
33 an issue, as Marc described, from many different perspectives. I would like to say that I
34 consider him to be multifaceted in terms of his experiences and in terms of his skills. But
35 one of the other aspects of that is that when you have a conversation with him, you
36 leave that conversation gaining knowledge about different perspectives, but also you
37 don't have to agree with Gene to leave the conversation in a positive way. In other
38 words, I've had many conversations with him about this County and the manner in
39 which we need to grow and sometimes we agree, sometimes we don't. But I always
40 leave that conversation learning more, and I always leave that conversation feeling
41 confident that if I have a question or a concern that I can raise it. And I think that's
42 precisely the kind of leadership that we need on the Planning Board. So again I
43 appreciate the many applications we've had and certainly the contributions of all of
44 those who are willing to serve. But I would support and I have from the very beginning



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1 the nomination of Gene Lynch, because again I consider him someone that brings an
2 array of skills to the Planning Board and also someone who I believes is approachable.
3 And in that alone he is a tremendous leader here in our community.

4
5 President Praisner,
6 Councilmember Knapp.

7
8 Vice President Knapp,

9 Thank you, Madam President. Actually I just wanted to address two of the issues that
10 have been raised today because I think it's important to make sure we talk them through
11 a little bit. First, I think Mr. Leventhal very clearly articulated the notion of positive versus
12 negative elements that we saw. The phone calls I received from people were in no way
13 generally phone calls to say here are good candidates: They were to tell me the bad
14 things about the people who were participating in the process. And for the record for
15 those who are out there who thought that phone calls were contributing in any positive
16 way in my decision making, they did not. And I think that we're seeing really the effects
17 of kind of negative campaigning that's taking place out there in the world. And I think
18 that when we have people who are as qualified as you've heard everyone up here say
19 participate in this process, we should be doing all that we can to try and identify all of the
20 positive attributes and really make sure that we are carrying those forward so they can
21 serve and really serve our community and continue to do that in as positive a way as
22 possible. And we start out from the negative side that makes it real tough to get that bad
23 taste out of everyone's mouth to actually then turn around and take positive actions. I
24 think that's very important for us to continue to focus on. So as people continue to
25 advocate and as people continue to apply, I would urge people to focus on what people
26 can do, not what people haven't done that you didn't like in the past. The other thing
27 that I think is important, and we've heard it mentioned a couple times, is the notion of
28 conflicts of interests. Probably four of the folks who had applied have what I would
29 qualify as significant conflicts of interest. That's not necessarily a bad thing on its face.
30 And I think it's important for us to recognize that. Eight out of every ten people that are
31 employed in Montgomery County do so in the private sector, which means they make a
32 living and they do things that could potentially make more money. And that's not
33 necessarily a bad thing either. And we want the best of everyone to participate and to
34 apply. And so when they walk in the door and put their application and say I'm
35 interested, many people will likely come forward with conflicts of interest. That does not
36 disqualify them as a candidate as long as that's disclosed and that's handled
37 appropriately. And so I think it's another point for people to recognize that conflicts of
38 interest generally tie to standing in financial gain and doesn't necessarily mean that a
39 conflict is meaning that someone didn't agree with your perspective previously. But I
40 think that because people have conflicts is not something that disqualifies them outright,
41 and I think it's important for people to understand that. And that we need to make sure
42 that we have that on the table going forward because that was raised a number of times
43 with a number of candidates as though that should pull them off of the table. And if we
44 did that, we wouldn't have any candidates for anything. And so I think that's important



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1 for us to recognize. And the only other point I would raise is any of these candidates
2 who have -- we will be voting on here shortly could potentially be future chairs. But the
3 reality is the current Chair has only be in place for less than a year and the most he will
4 be able to serve will be eight years. These folks who we're nominating today, at least
5 under current law, even if they were to -- even if the current Chair would serve his full
6 eight years, would only be eligible to be Chair for another year beyond that. So I don't
7 think at this point that we should probably even talk about future potential chairs
8 because just giving the timing, no one is going to be there for very long. So I think it's
9 important just to put that out there. And so those are just the comments I want to put as
10 it relates to the process in general.

11
12 President Praisner,

13 All Councilmembers having spoken except myself on this issue -- before I call for a vote,
14 I wanted to comment just briefly. I agree with my colleagues that I found it very
15 disappointing the negative campaigning that was associated with this process. Usually
16 you have folks advocating for their candidate, but you can strongly advocate for your
17 candidate without tearing everybody else down. And unfortunately there appeared to be
18 either a spillover from the negative campaigning you see in a partisan elections but I
19 hope that we see the end of it in this -- beginning and the end of it in this process.
20 Because I can tell you personally that from my perspective as you've heard from other
21 Councilmembers, I think it works just the opposite of what people think they're trying to
22 achieve in that process. And it is also true that it's been my experience that the longer
23 and more that someone is involved, the more you're likely to generate folks who aren't
24 happy with one decision or action or approach. And that is not a badge of honor nor is it
25 a band-aid of criticism from my perspective either. It comes with the territory of making
26 decisions. Councilmember Leventhal made the point earlier on another item about folks
27 being unhappy with you. And that I think comes with the territory of making any formal
28 kind of decision whether it's as an elected or an appointed decision. If it's unanimous
29 and everybody's happy, maybe there's something wrong with the decision too. Because
30 in my perspective again, every decision has somebody who would be happier with
31 some modification slightly from what is being implemented. I intend to vote for Gene
32 Lynch. I've known Gene for a very long time as both a candidate for the County Council,
33 as a civic community leader, as a confidential aide to the County Executive Potter, as
34 CAO, and then as a private developer. And I think he does bring unique perspectives for
35 us in this challenge of being able to bridge the polarization that we appear to have in
36 this County at this point. You're either a Hatfield or a McCoy. You wear a white hat or a
37 black hat. There's no gray. And unfortunately I have experienced that most issues are
38 gray, not black and white. Not good cop, bad cop. Not good/bad. And we need folks
39 who understand and appreciate those perspectives to be able to walk in each other's
40 shoes and to understand the concerns. And I think Gene's experience in Montgomery
41 County, Gene's experience outside of Montgomery County; I dealt with him when he
42 was General Services Secretary, and also an assistant to then GovernorGlennDenning. I
43 think he understands this state from all kinds of perspectives, and he can help both the
44 Planning Board and the community and the developer community in working together to



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1 resolve the complex issues that we face. So I am pleased to and proud to vote for Gene
2 Lynch in this process. Let me also say that I thought there were many outstanding
3 candidates in this approach, and I appreciate the fact that folks have put themselves
4 forth, gone through the rigor of interview, and also the documents and also found
5 themselves being scrutinized unfortunately unfairly in this process. But I guess that
6 goes with the territory today too. Councilmember Andrews, you had something else you
7 wanted to add.

8
9 Councilmember Andrews,

10 I just wanted to add -- thank you very much, yeah. I wanted to amplify on one aspect of
11 my remarks and that is that I do think it is important to look at the potential ability of
12 people we appoint to the Planning Board to serve as a future chair. In fact, the current
13 Chair suggested himself Royce Hanson that we have that as a consideration. I think it's
14 a good situation to have a number of people on the Planning Board who could move up.
15 I don't know how long Mr. Hanson will stay as Chair; whether he'll want to stay two
16 terms. I hope he will. I think he's an excellent Chair. But I think his advice was good and
17 so that's one of the considerations I look at in the review process.

18
19 President Praisner,

20 Individual Councilmembers may make that consideration, but that issue was not in front
21 of us. You've generated a couple of more lights, and to be fair, I'm going to let those
22 folks speak, but very briefly please, so we can vote. Councilmember Ervin.

23
24 Councilmember Ervin,

25 I just wanted to be on record saying this regarding Mr. Lynch. And that was during the
26 process all of the applicants made appointments to meet with Councilmembers or made
27 telephone calls to Councilmembers which is appropriate; however, Mr. Lynch thought
28 better of making the phone call to me or my office. I never had one meeting with Mr.
29 Lynch. I never had a phone call. And so for me, when I hear Councilmembers talking
30 about arrogance, I think it is very arrogant of a person who is trying to serve at this level
31 in government to not have the smarts to contact each and every single Councilmember.
32 Maybe he had his votes and he didn't need my vote. I'm quite not sure. But as we move
33 forward, if Mr. Lynch does end up getting this appointment, I would hope if he's listening
34 my number is 240-777-7960. Thank you.

35
36 President Praisner,

37 Councilmember Leventhal. Last comment.

38
39 Councilmember Leventhal,

40 I have great respect for the good judgment of my friend and colleague Phil Andrews, but
41 I have to say since he's now repeated it twice the message that I want to send to the
42 Planning Board is that the County Council is watching the Planning Board very carefully.
43 We want to support the Planning Board. The Planning Board plays a very important
44 role, both the commissioners and the staff. But I do not want to send any signal either to



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1 the current Chairman or to anyone who has interest in filling critically important role in
2 the future that everything is okay-dokey, everything hunky-dory, and they should relax
3 because we're supporting them ahead of time. That is not my view regarding the
4 Montgomery County Planning Board at this time. I like working with the Planning Board.
5 They need their moral shored up. They need to get on track. They need to restore
6 public confidence. But the last thing I want to do right now is make any assumptions
7 about where I will be or what my thinking will be at any point in future. The Planning
8 Board has got a big job to do and some big commitments to fulfill before any
9 commitments in my judgment are made as to its future leadership. What we need to do
10 right now is to work with the current Chairman and ensure that he is able to fulfill the
11 significant public responsibility that he has taken on with no commitment whatsoever to
12 any future terms or any future individuals.

13
14 President Praisner,
15 We are going to vote. The first candidate who was nominated was Gene Lynch. All
16 those in favor of appointing Gene Lynch to the Planning Board, please indicate by
17 raising your hand. Councilmember Elrich, Trachtenberg, Praisner, Berliner and
18 Andrews. Those who would like to vote for Ms. Osias, please indicate by raising your
19 right hand. Councilmembers Ervin, Floreen, Leventhal and Knapp. Councilmember
20 Lynch has been appointed to the Planning Board. Councilmember Leventhal -- Gene
21 Lynch. I'm sorry, did I say Councilmember. He's not a council member.

22
23 Councilmember Leventhal,
24 Mr. Lynch.

25
26 President Praisner,
27 Mr. Lynch.

28
29 Councilmember Leventhal,
30 Right, we're all doing the same thing. But I just want to make it clear that the practice
31 has always been that where there is a contested vote for a planning commissioner that
32 the Council does unite and then vote by acclamation, recognizing that we look forward
33 very much to working with commissioner to be Gene Lynch.

34
35 President Praisner,
36 Right.

37
38 Councilmember Leventhal,
39 And so we're also moving simultaneously.

40
41 President Praisner,
42 Right, I was -- the lights all went on to do so. A vote by acclamation for Gene Lynch for
43 the Planning Board is before us. All in favor? That is unanimous. Thank you. We now
44 need to move to the appointment of a replacement for Meredith Wellington, a



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1 Republican or an Independent would be in order; someone in those identifications.
2 Councilmember -- Vice President Knapp.

3
4 Vice President Knapp,

5 Thank you, Madam President. It is my pleasure to nominate Jean Cryor for the second
6 position that we are appointing today. Jean Cryor, former State Delegate, has long
7 served our community and has a tremendous track record of working with everyone in
8 the community. When I was elected four and a half years ago I was stunned to watch at
9 the way that she does her outreach and the way that she has worked with people all
10 breaths of the society to bring them together to achieve true community consensus. And
11 when given the many comments that we have just had over the course of the last 40
12 minutes as it relates to what the Planning Board needs and what the Planning Board
13 requires, both and her breadth of knowledge of both local and state issues and her
14 ability to work with others and to listen and to achieve consensus, I think Jean Cryor is
15 unparalleled. And so it is my pleasure and great honor to nominate her for the second
16 position.

17
18 President Praisner,

19 Are there any other nominations to come before the Council? There being none, I will
20 call for other Councilmembers to speak. Councilmember Elrich.

21
22 Councilmember Elrich,

23 I just wanted to say that I thought that John Low offered a really fresh perspective. And I
24 was impressed with his interview. He clearly needs I think more seasoning in terms of,
25 you know, understanding the full depth of the kind of issues that -- no, Roger, he doesn't
26 need a tie.

27
28 Vice President Knapp,

29 That's why Mr. Elrich appreciated him so much.

30
31 President Praisner,

32 (Inaudible).

33
34 Councilmember Elrich,

35 Could be, but I did think that -- .

36
37 Unidentified,

38 (Inaudible).

39
40 Councilmember Elrich,

41 Thank you. I thought that he brought a perspective that was interesting; certainly a
42 broad, philosophical perspective that would have changed some of the discussion on
43 the Planning Board. And I think would have reflected some of the broader concerns that
44 are in the community. I mean everything isn't technical. A lot of what we're trying to sort



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1 out here is not what's the ideal height of the building, the width of a street and the
2 square footage, but what kind of communities are we trying to create and what are the
3 values we're trying to incorporate and build into the communities, and I thought that
4 John offered a perspective that would have, I think, enlightened and contributed to that
5 kind of discussion. And that said, I've known Jean for many years and she is somebody
6 I can support and will support for the Planning Board. I think she'll do a good job. She is
7 very skilled. Again, she's somebody who I have had the pleasure of working with and
8 agreeing with and on occasion disagreeing with on a few issues. But I think she's
9 demonstrated herself to be open-minded and fair, and I think we could not do better if
10 we were appointing a Republican to the Planning Board. She would be in the best
11 tradition of the best of that party. So I'm happy to support her.

12
13 President Praisner,
14 Councilmember Leventhal.

15
16 Councilmember Leventhal,
17 Well I agree with everything Mr. Elrich said. First of all I just want to sincerely praise
18 Jean Cryor. She is just one of my favorite people in Montgomery County. And she
19 brings with her many of the qualities that I think the Planning Board so very much
20 needs. She's delightful, tactful, pleasant, good company, excellent people skills, a
21 listener, seriously considers balancing points of view, understands that there can be
22 valid points of view in disagreement. I'm just -- I could not be more enthusiastic about
23 the opportunity to have her serve on the Planning Board. And I think it's just terrific that
24 she's willing to continue in public service. Having said that, I also do want to put in a
25 word of praise for my good friend, John Low. I think it would be entirely okay with me to
26 appoint a member of the Green Party to a seat on the Planning Commission. The law
27 clearly allows that. And I look forward to continuing my good friendship with John Low. I
28 have a high regard for him. I think he has an important voice and can play an important
29 role in County affairs, including potentially future opportunities for service on major
30 boards and commissions. So he's a good friend. I look forward to working with him. And
31 I'm glad he applied for this position.

32
33 President Praisner,
34 Councilmember Berliner.

35
36 Councilmember Berliner,
37 Thank you, Council President. It is a pleasure to support this nomination. Jean Cryor is
38 one of the class acts in Montgomery County and has been for years. Her personal
39 qualities are just extraordinary. And I actually came to think of this pairing of Gene and
40 Jean as the yin and yang of having these extraordinary personal warm qualities that are
41 founded in consensus building with sort of the intellect and public policy wonkishness of
42 Gene Lynch. And I thought that the combination together worked very well, so, both of
43 them individually, I think are great additions and collectively, I think they work together.
44 So I'm pleased to support this nomination.



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1
2 President Praisner,
3 Councilmember Floreen.

4
5 Councilmember Floreen,
6 Thank you. A couple things about Jean Cryor, which I think make her an extraordinary
7 person. She mentioned this during her interview with her which I was most taken by,
8 which was her recognition of the fact that when you make a difficult decision it is so
9 important to explain it to the public, to the people who are in front of you to help people
10 appreciate that their concerns have been taken into account; and you have agreed with
11 them or you have not; and to help them understand the rational for that. I think
12 communication in this job is so important, and I am so pleased that Jean recognizes
13 that function. And I wish her the very best in serving us in that on the Planning Board. I
14 also wanted to comment. There are a number of my comments -- of colleagues have
15 referred to consensus in the Planning Board. That's the last thing I think we should ask
16 for. I think we should ask for debate. I think we should ask for grounded conversation
17 that may conflict. That's okay. We don't all have to agree. Let's agree that we represent
18 and the Planning Board must face a community of varied points of view, very different
19 perspectives, and often conflicting objectives. And so I encourage that debate down
20 there. More debate down there may mean less debate up here. We shall see. But I think
21 we're going to have a great board with these two additions. And I think the biggest
22 challenge of the Planning Commission is going to have to be which nickname separates
23 the Jean from the Gene.

24
25 Councilmember Trachtenberg,
26 That's a very good point.

27
28 President Praisner,
29 Councilmember Andrews.

30
31 Councilmember Andrews,
32 Thank you. I agree. The goal really is to achieve farsighted policy and good
33 implementation of it, not consensus, so I think it is good to have different views.
34 Everybody agrees all the time; you've got unnecessary people in the room. So it's good
35 to have debate, and I don't expect agreement on everything. If there were agreement on
36 everything, I'd wonder. I think that Jean Cryor will do an excellent job on the Planning
37 Board. She's a very dedicated public servant. I want to say I thought John Low was very
38 refreshing and inspiring, and I hope he will throw his hat back in the ring for some other
39 positions because I look forward to supporting him in his efforts to become more active
40 in county government. I thought he was a very impressive candidate. I was struck by his
41 thoughtful answers, and I hope that he will continue to apply for positions because I
42 think he could make a real contribution to the County as an appointed official.

43
44 President Praisner,



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1 I don't think anything more needs to be said about Jean Cryor. Everyone has spoken
2 about her strong involvement and the engagement and what an outstanding legislator
3 she was, and what a very active community commitment she has from a standpoint of
4 listening and participating and engaging folks, and also in seeing the broad perspective.
5 So I think having both Jeans on the Planning Board will do well for our DNA. All in favor
6 of the appointment of Jean Cryor to the Planning Board? It is unanimous. The County
7 Council is in recess until 1:30. The Planning Housing and Economic Development
8 Committee will meet here in five minutes.

9
10

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1 TRANSCRIPT Council President Praisner,
2 Good afternoon ladies and gentlemen. There are no Public Hearings this afternoon so
3 we're going to move right into Legislative Session, day 20. And Madam Clerk, I believe
4 there are Legislative Journals to approve.

5
6 Council Clerk,
7 Yes, you have the journals of May 16th, 24th and June 12th for approval.

8
9 Council President Praisner,
10 Is there a motion?

11
12 Councilmember Knapp,
13 Move approval.

14
15 Council President Praisner,
16 Vice-President Knapp. Second by Councilmember Floreen. All in favor of approving the
17 Legislative Journal? Marc and Nancy, you voting? It's unanimous among those present.
18 Okay. We have a series of Bills to introduce that I want to make note of. Bill 13-07,
19 Moderately Priced Dwelling Unit MPDU Amendment sponsored by Councilmember
20 Leventhal. The Public Hearing is scheduled for July 19th at 1:30 p.m. Councilmember
21 Leventhal wanted to comment.

22
23 Councilmember Leventhal,
24 Very briefly. Thank you Madam President. This Bill has two very simple purposes. The
25 first is very simply, repeal MPDU buyouts altogether. In the last year, there has been
26 only one MPDU buyout provided and the payment to the housing initiative fund was
27 quite high. In prior years, there was lot of concern, including from me, that there were
28 way too many buyouts authorized and that the payments to the HIF in return for the
29 buyouts were way too low. In 2004 I tried to eliminate the buyout provision altogether
30 and my colleagues on the County Council were not persuaded that that was a wise
31 approach at that time. At that time that was a lot of concern about high condominium
32 fees and that if the condominium or home owner's association fees were too high for an
33 MPDU buyer, the unit might end up going as a windfall at a very low price to a higher
34 income buyer. I don't think that's as much of a concern today for two reasons. First of
35 all, the condo market is nowhere near where it was three years ago. But more



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1 importantly, the law provides that MPDUs may be constructed in a somewhat different
2 site. They don't actually have to be integrated into the same building under current law
3 and I believe that that provision will enable us to get past the problem that we were
4 stuck on in 2004 because the condo fees are attributed to services provided. That is, if
5 there's a swimming pool or an exercise room or a valet or those sorts of things. If you
6 build the MPDUs in a separate site you can avoid that problem but the main thing is that
7 under my Bill developers must actually build the units. At the time that the MPDU
8 program was initially adopted it made sense as a policy matter. It was a new program
9 and there might have been circumstances where the MPDUs made the economics of
10 the project infeasible and so certain builders paid into the Housing Initiative Fund. The
11 Housing Initiative Fund has much less flexibility today to construct new units because
12 the land is so much scarcer today. And so I just think that the main effect of this Bill will
13 be to ensure that when we have a new subdivision or when we have a new multiunit
14 housing project we will actually get construction of new affordable units guaranteed and
15 so I am very grateful for my friend and colleague Phil Andrews' co-sponsorship of this
16 measure. I hope the Clerk will note that he is a cosponsor and appreciate my
17 colleagues considering this. The other item that is contained in this Bill very simply was
18 suggested to me at a meeting I attended of the Commission on People with Disabilities
19 in which our good friend Jackie Simon raised her concern that some units that are
20 specially equipped for the disabled were going for sale or rent to MPDU buyers who
21 were not disabled. And that where we had units that have the appropriate equipment,
22 the appropriate size of aisles, doorways, hallways, bathrooms and that sort of thing,
23 they ought to be set aside and where you have someone who is a qualified disabled
24 buyer or renter, that person ought to get first preference on the disabled accessible unit.
25 So, again, two fairly simple provisions to understand and I welcome the PHED
26 Committee's consideration of this when the PHED Committee Chair sees fit to schedule
27 it and I thank my colleagues.

28
29 Council President Praisner,
30 Council Vice-President Knapp.

31
32 Councilmember Knapp,
33 On the next one.

34
35 Council President Praisner,
36 Oh okay. Councilmember Elrich.

37
38 Councilmember Elrich,
39 I don't know if it's the right time to ask a question but when you talk about not providing
40 units on site where the condominium fee would apply, does that anticipate for example
41 providing of the MPDUs in a wholly different site than the site? In other words you could
42 --.

43
44 Council President Praisner,



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1 Yes.

2

3 Councilmember Elrich,
4 Okay.

5

6 Councilmember Leventhal,
7 It doesn't mandate that but my Bill does not change that, Mr. Elrich. The law already
8 states that MPDUs may be constructed at a different location.

9

10 Council President Praisner,
11 Within the same planning area I believe.

12

13 Councilmember Leventhal,
14 Within the same planning area. But, so, but that's not a change in my Bill. That's already
15 provided.

16

17 Councilmember Elrich,
18 Okay. I just wondered if it was being highlighted. Okay.

19

20 Council President Praisner,
21 Councilmember Trachtenberg.

22

23 Councilmember Trachtenberg,
24 I just want to officially request that my name be added as a sponsor to the legislation
25 and I thank Councilmember Leventhal for advancing it.

26

27 Council President Praisner,
28 Mr. Faden, if you could, on lines 21 and 22, it allows an applicant to build MPDUs at
29 another location only if the agreement meets all requirements of Section 25A dash 5B,
30 but dash 5B is not included within the packet and I think it would be helpful if you can
31 recollect what that is.

32

33 Mike Faden,
34 That is the offsite alternative.

35

36 Council President Praisner,
37 Okay.

38

39 Mike Faden,
40 As Mr. Leventhal said, this Bill doesn't amend that section. We can reprint it in future
41 packets if you think that will help.

42

43 Council President Praisner,



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1 I think it would be helpful since I would encourage us in the drafting of legislation where
2 it refers to another section of the law that is not being amended to incorporate the
3 unamended but referenced piece within the legislation when introduced. Thank you.
4 Okay. That item is introduced. We are now moving to Bill 14-07 Forest Conservation -
5 Enforcement sponsored by Councilmember Elrich and Council President Praisner. The
6 Public Hearing is scheduled for July 24th at 1:30 p.m. On this item. No, okay. Yeah. July
7 10th I believe.

8
9 Mike Faden,
10 Yes.

11
12 Council President Praisner,
13 Not the 24th.

14
15 Mike Faden,
16 Right.

17
18 Council President Praisner,
19 Okay. Bill 15-07. Forest Conservation - Religious Institutions sponsored by the Council
20 President at the request of the County Executive. The Public Hearing is scheduled for
21 July 24th at 1:30 p.m. Expedited Bill 16-07. Yes.

22
23 Councilmember Leventhal,
24 I want to speak to item nine please.

25
26 Council President Praisner,
27 Sure, I'm sorry. Go ahead.

28
29 Councilmember Leventhal,
30 Thank you Madam President. First of all, I want to thank you very much for getting this
31 on the Council's agenda. If it is in order I understand that it's a courtesy for the Council
32 President to do this at the County Executive's request, I would like to be added as a
33 cosponsor of this measure.

34
35 Council President Praisner,
36 Sure, that's fine.

37
38 Councilmember Leventhal,
39 I am absolutely persuaded by the County Attorney's reasoning here. And I do believe
40 that it is important that we do not impose unique burdens on religious institutions. I think
41 there is a strong legal justification for taking this step and I appreciate that the County
42 Executive has so recommended. I did have a question for Mr. Faden. In the packet
43 accompanying agenda item nine on circle nine in the memo from Attorney Mark Vianni,
44 there are some exhibits referenced which go back to 2001 and in which Mr. Vianni



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1 points out that in 2001 the County Attorney and County Executive recommended that
2 the Council not take this step that the County Executive is now proposing to repeal.
3 Unfortunately the exhibits referenced on circle 9, exhibit E and exhibit F with Mr.
4 Vianni's memo are not included in this packet. And I do think it is a very important point
5 that there had been a history here of our attorney, the County Attorney suggesting that
6 this was an unwise move and let me just briefly say from time to time I and other
7 Councilmembers vote against the advice of the County Attorney. I have done it and we
8 do it from time to time. When we do it, we expose ourselves and in my experience --.

9
10 Council President Praisner,
11 To potential litigation or other --. (laughter).

12
13 Councilmember Leventhal,
14 We have exposure. I'm trying to find the correct.

15
16 Council President Praisner,
17 Legal exposure.

18
19 Councilmember Leventhal,
20 We have exposure, okay. And I'm trying to find the right vocabulary here. I'm not a
21 lawyer. I don't play one on TV. I'm just a hard working public servant. Okay. But I think
22 any time the Council acts against the advice of the County Attorney, I think it is
23 especially important that we consider with great care the steps that we take and what I
24 appreciate about this legislation is that it acknowledges that a very important public
25 purpose is served by religious institutions. This is a theme that I think it is critically
26 important that the Council acknowledge. There are different public policies in question
27 here. The Forest Conservation Act is a principle that I support. But I also recognize that
28 we as a County should be, should take it as in the public interest that individuals have a
29 place to pray and to pursue their faith and to congregate and to exercise their
30 constitutional rights and to be called to a higher purpose, to consider issues of ethics
31 and morality and social justice and righteousness and all of those causes. So, I feel
32 quite strongly about this legislation and again I very much appreciate the Council
33 President's facilitating it and coming before the Council and I thank County Executive
34 Leggett and the County Attorney's Office for making sure that we do get a chance to
35 consider it.

36
37 Council President Praisner,
38 There are other pieces of forest conservation law which we will be seeing as a function
39 of changes that I believe the Planning Board is sending to us as well. Expedited Bill 16-
40 07 Admissions and Amusement Tax – Exemption - Golf Courses sponsored by
41 Councilmember Knapp. Now, Vice-President Knapp.

42
43 Councilmember Knapp,



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1 Thank you Madam President. Just for purposes of Public Hearing, I was made aware of
2 Friday another potential area that could be considered which is, who knew, there is an
3 agricultural amusement tax which collects a very small amount of money that was
4 apparently a part of some of the public discourse in the last general assembly session.
5 And so for purposes of Public Hearing I would like to add the ag amusement tax for
6 consideration along with the amusement tax for golf courses.

7
8 Mike Faden,
9 Right.

10
11 Councilmember Knapp,
12 Okay, thanks.

13
14 Mike Faden,
15 Same tax applicable to --.

16
17 Councilmember Knapp,
18 Right, correct.

19
20 Council President Praisner,
21 Okay. Expedited Bill 17-07 Taxicabs - Driver Identification Cards sponsored by
22 Councilmembers Ervin and Floreen. The Public Hearing on this item is scheduled for
23 July 24th at 1:30 p.m. Councilmember Ervin.

24
25 Councilmember Ervin,
26 The taxi industry came to me to let me know that they still need temporary identification
27 cards for their drivers to have a full pool of drivers which is needed to enhance customer
28 service and that's the reason why I am sponsoring this Bill along with Councilmember
29 Floreen. So, it's still, the time it's taking to get approval it's shortening but it's not short
30 enough so they still need our assistance in this area, that's why I am sponsoring the Bill.

31
32 Council President Praisner,
33 Okay. Thank you. So, Bills 13-07 14-07, 15-07, 16-07, and 17-07 are all introduced with
34 Public Hearing dates as noted. Councilmembers have been busy. Okay. We will now
35 move, speak about a busy Committee, the T&E Committee. We're going to move now
36 to review of Bill 48-06 which is a comprehensive revision of the streets and Road Code
37 and legislation associated with that. I have shared with the Chair of the Committee that
38 one of my concerns and I shared this with Mr. Faden yesterday, one of my concerns is
39 that I think perhaps it was the workload of the Committee's work and the multiple
40 meetings but I thought the packet was a little sparse in covering the myriad of issues
41 that were reviewed and discussed by the Committee in making the legislative changes
42 that are in front of us and did not give enough discourse of the variety of issues.
43 Certainly there are items here but as I have been told by others on the Council there is
44 some concern that there may not be adequate review of all the modifications and in fact



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1 someone had asked for a crosswalk or some kind of list of all of the changes and
2 discussions. So, with that in mind, I've also indicated to the Chair of the Committee that
3 it's my intent that we work through this in a very deliberative fashion making sure that
4 every Councilmembers' questions are answered. And concerns that may continue to
5 exist in the Executive Branch and elsewhere get their full discourse. And should there
6 be modifications or some hesitancy or request, concern, we will treat this as a
7 worksession and take the final action next week if that's necessary. So, with that in
8 mind, we have allotted two hours plus ten minutes at this point to this deliberation and
9 we will begin and I'll turn it over to the Committee Chair.

10
11 Mike Faden,

12 I just want to say that we got your message Ms. Praisner, and we are prepared to go
13 through all the changes the Committee made.

14
15 Council President Praisner,

16 Okay.

17
18 Glenn Orlin,

19 A lot of them are very, very technical but there are certainly others that are not in the
20 cover memo of which we could cover.

21
22 Council President Praisner,

23 Right.

24
25 Glenn Orlin,

26 And we know where they are.

27
28 Council President Praisner,

29 And folks were, I think, extremely interested in being told specifically where there is a
30 change from what exists now in the law so that's the other request that I received before
31 I came upstairs. So we'll work through this. I suspect we'll get a lot of work done but I
32 want to put that point out there for everybody. Okay. Nancy, the microphone is yours.

33
34 Councilmember Floreen,

35 Thank you very much Madam President. At the very get go, I want to extend my
36 personal thanks to a bunch of folks who've really participated wholeheartedly and
37 sometimes enthusiastically and sometimes not in all of this effort. But what we are doing
38 here in terms of the Road Code is we're kind of catching up with the rest of the world in
39 terms of the thinking about how roads look and feel and operate within a community and
40 we haven't been able to come up with a catchy name. Other communities have called
41 this work smart streets work. I'd like to think of this as a community design Road Code
42 but we are I think updating a basically I think 50-year-old law to bring it in sync with
43 current thinking and current design objectives primarily to create more pedestrian
44 friendly street environments, to add the attention to sidewalks and hiker biker trails and



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1 bike trails that have been included sometimes as an afterthought and bringing the road
2 construction initiatives and our master plans in sync as well as introducing the
3 environmental concerns as major features. I want to thank – Partners Group who has,
4 who have been with us at every single session and a variety of informal sessions
5 working through the details on this. The WABA, Washington Area Bicyclist Association
6 has been incredibly engaged again at nearly every session. Staff from all the
7 departments have been at the table and have been incredibly responsive and attentive
8 to staff needs and our needs. And especially Mr. Orlin over there, it only took him four
9 years to produce a draft of some revisions to the Road Code which I know has taken
10 tremendous work and coordination informally with staff members across the County and
11 then six months with the Committee trying to work out the details of all of this. Everyone
12 has played a tremendous part in looking at how we can bring many of these details up
13 to current standards and understanding that we can't solve every problem but we can
14 identify new priorities here. And then special thanks of course to the Committee
15 members, George and Valerie who've been very engaged in all of this and have made
16 tremendous suggestions as have the staffs from most the Council offices and nearly
17 everyone's been engaged in one way or the other in trying to sort out the details here.
18 It's 130 pages so I figure if we start now, we'll be done in a couple of days. But the fact
19 of the matter is the principle points are pretty straight forward. We are trying to create an
20 environment in which agencies do not argue about how roads are going to be designed
21 and we are not defining at this point in time all the details. The issue that has been of
22 greatest concern to the County Executive's staff really is who is going to set these road
23 standards and design standards. Are we going to make roads unusable or usable by
24 trucks, by fire and rescue folks? Are we going to make, have impossible to achieve
25 standards adopted for our Committee design? And I simply want to note what the
26 Committee is recommending, we include a set of default standards but the basic issue
27 here which is coming to consensus over how these roads will look and feel in the future
28 is going to be worked out through the direction of County staff over the next year. We
29 basically are going to defer to the experts in terms of bringing together the community
30 players as well as the best support that they can garner to work through these details
31 and I know that has been a great concern to the County Executive folks and we
32 certainly respect that. So we are not today going to tell the community that the roads are
33 going to be x feet wide, the sidewalks are going to be y feet wide and all the details that
34 go into predictability in construction practices. But we do hope that at the end of the next
35 year folks will have worked through these expectations with a series of elements that
36 will guide all future road construction and reconstruction so that arguments will not
37 occur at staff level or with, down at the Planning Board or with DPWT in other
38 environments. We wanted to straighten that out with that objective but we are not
39 ourselves today telling them how that's all going to work. But we do have, we were
40 asked by some of the Committee members to take this task on ourselves, Madam
41 President. And rather do that we have agreed with them that there's some principles
42 that we would hope that the County Executive staff will employ in working out the details
43 and we have a memo that that affect that we will provide you with for your signature,
44 Madam Chair. So, with respect to the basic details here, Glenn can take us through the



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1 packet here. Primarily though we are cleaning up a lot of loose ends that are out there.
2 We apparently it turns out, we have been adopting master plans and had some
3 terminology that our code didn't respect. So we're going to, that's a house cleaning
4 effort. We are throwing out some lovely archaic language having to do with the days
5 when we had more horses on the roadway and different kinds of challenges out there.
6 But we are, and then there's a certain amount of just verbal correction and update in
7 most of the language throughout here. But we are also identifying some priorities for
8 information that we will receive from utilities when they do construction in the roadway
9 to make sure that the County knows where the things are so that we can make sure that
10 we do not adversely affect them. And Councilmember Berliner proposed some
11 additional language that the committee massaged a tad, but included that respects
12 community needs when sidewalks and the like are closed to offer some more
13 predictability and attentive to the pedestrian in that environment. So we had a great
14 opportunity to sort through everyone's pet peeves as well in revisiting the challenges of
15 the roadway construction process. Not everyone is tremendous, has tremendous, has
16 tremendous attention to details as everybody else. I know my colleagues have spent a
17 lot of time going over this with their staffs. So we will be happy to talk through the details
18 here as folks choose. I will say though that Glenn and Mike's work here has really made
19 it possible for us to move forward something that at one point was almost stuck in the
20 water. And that's because they've been flexible and I think we have come up with a
21 pretty responsive document that respects community needs, respects the priorities of
22 pedestrians and bicyclists. And at the same time encourages the, supports the mobility
23 that our roads are fundamentally designed to achieve. So, there's going to be a,
24 basically going to be a sliding scale at the end of the day as to what standards will be
25 applied in which place. There'll be a little bit room for discretion here and there and
26 some additional standards that will be worked out over the course of the next year.
27 There have been, everyone, many of the people at the tables that we sat at on this have
28 had challenges in trying to sort this out in the past. And so I'm very pleased that we are
29 finally able to bring this to a pretty good closure. I know that there's still some loose
30 ends. I know that the County Executive's staff will continue to have concerns about the
31 doability of these elements and I think, I'm very hopeful that this process that we have
32 asked them to undertake for the next year will resolve most, if not all, of the challenges
33 in terms of the details that aren't in front of us today but are very important to them in
34 terms of how they look at roadways, how they design them and how folks construct
35 them and in concert with the Planning Board. And Mr. Hanson was with us for a number
36 of meetings and is very supportive, I know, of the initiatives here. And I had talked to
37 him this morning about being able to join us today but he let me know a little while ago
38 that he wasn't going to be able to make it. Hopefully we're going to get the transit
39 center. So with that, Glenn, why don't we go through your packet and you can bring my
40 colleagues along on every other detail? Of course we could provide everyone on the
41 Council with the packets from the past six months and that will --.

42
43 Council President Praisner,
44 That's already occupying one drawer.



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Councilmember Floreen,
Okay, Glenn.

Glenn Orlin,
Mike and I will play tag team on this, some of these issues I was lead on, some he was and once we are through with the packet, then we will go the Bill in terms of the changes that, from the, from what was introduced, the Committee did that were significant.

Council President Praisner,
Okay.

Glenn Orlin,
That didn't make it into the packet. First subject is road classifications. There's been a disconnect between road classifications and master plans and with the County code for a long time. Road classifications, every street in the County in master plans that are higher than function a secondary street is classified as something and the classification relates to their intended use, whether it's being used mainly for through traffic or used mainly for local traffic or some combination of the two, some are more like 50/50. The definitions, the table at the bottom of page one and top of page two is a crosswalk, if you will, comparing for each classification whether that definition exists in the master plans or in the code or both and if they connect and you can see where the classifications are highlighted, italicized, they are not, they're disconnected. For example, you have lots of master plans with major highways in them. Most master plans have major highways. So it doesn't exist in the County law. There is no major highway in County law. The same is true with industrial street. There are a couple of principal secondary streets et cetera. So this Bill would put them in sync by changing the law to meet what's in master plans and the language is, the definitions are on circles 44 to 46. And the definitions used from everything from a freeway down to a primary residential street are very similar to what you find in master plans. Unfortunately, one of my bugaboos is I've been trying to regularize the definitions in master plans as we've gone through them the last seventeen years. They're still not entirely in sync but they're pretty close. One of the changes the Committee made based on recommendations from the County Executive is for secondary residential streets and tertiary residential streets where you will see this on circle 46, the double underlining there. We essentially returned those definitions to something that's very close to what's in existing law and the reason for that is because in fact master plans don't designate which streets are secondaries and tertiaries. They just basically say everything lower than a primary is one or the other and so there's really no guidance in master plans as to how they are going to be, what should be what and so we've essentially defaulted back to definitions that are either exactly or very close to what's in existing law. That was one of the changes the Committee made. There's two other classifications however that the Bill would create. One is called parkway classification. The other is called minor arterial.



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1 There are, if this Bill passes there won't be any roads that are classified as parkway or
2 minor arterial because that would take a master plan amendment. And one of the
3 follow-ups and there's several follow ups to this Bill, is for a functional master plan
4 amendment by the, starting with the Planning Board to redesignate certain streets,
5 certain streets and roads from whatever they are now to parkways and from whatever
6 they are now to minor arterials, so that will go through the full public process. There is I
7 understand a master plan that they have planned that's going to cover some similar
8 material and the hope is this could be worked into that workload. The parkway
9 classifications are for basically roads like frankly Montrose Parkway where trucks are
10 prohibited, heavy trucks are prohibited. That's the only one right now where master
11 plans say trucks are prohibited. It's classified as a major highway but with that special
12 provision. There are some other examples. Probably very few however that could also
13 fit the parkway classification that are not yet built. The classification that's more likely to
14 be utilized is, more regularly is minor arterial. --this is a bugaboo she had for years and I
15 agree with her, there is a very wide gap between the classification of a primary
16 residential street and an arterial and we talk about these things in master plans. The
17 biggest arguments we have is, is this street a primary residential street or is it arterial
18 because there's so many differences in terms of how policies are applied, speed humps,
19 cut through traffic restrictions, and to a lesser degree but still out there, snow removal,
20 bus routing, that sort of thing. Even the priority of where sidewalks go depends on
21 whether you're an arterial or a primary residential street. And at least to me and to Ms. –
22 and others, it sort of cries out for some kind of intermediate classification which will
23 allow some traffic calming, if you will, but on streets which are really have a function
24 which more approximates an arterial. And so that's where the minor arterial comes
25 from.

26
27 Councilmember Floreen,
28 See these issues all come from former Planning Board members, those arguments.

29
30 Council President Praisner,
31 Well, Vice-President Knapp has a question and I have one too so why doesn't, Mike,
32 why don't you go first. Thanks.

33
34 Councilmember Knapp,
35 Mine is very simple. By doing this when we get the next master plan, whatever it is,
36 every road classification in that master plan should tie to something we have in this
37 chart and the only way for there to be something that wouldn't be identified here would
38 be for them to come back to us to identify a new definition for a different type of road?

39
40 Glenn Orlin,
41 That's right. I mean if, all master plans for the last several years have fit in one of these
42 categories already. But there is the possibility, this was raised in the worksession, what
43 if the Planning Board invents a new kind of classification? Well, we don't really want to
44 have that anymore.



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1
2 Councilmember Knapp,
3 Right.

4
5 Glenn Orlin,
6 Unless the Council actually amends the County code to recognize it as a proper
7 classification with standards that would follow from it.

8
9 Councilmember Knapp,
10 Okay. So that's, so this sets --.

11
12 Council President Praisner,
13 So, yeah, in addition to a Zoning Text Amendment that would come with a master plan,
14 there would be an amendment to this legislation that would introduce any new road that
15 a Planning Board might want to introduce in a master plan.

16
17 Glenn Orlin,
18 Any new type of road.

19
20 Council President Praisner,
21 Well, that's what I meant, I'm sorry.

22
23 Glenn Orlin,
24 Yeah, right, right.

25
26 Council President Praisner,
27 Any new type, any change or new type of road.

28
29 Glenn Orlin,
30 Yeah, I'm not familiar with any that's happened in the last decade or so.

31
32 Council President Praisner,
33 Well, my point is not that that has occurred.

34
35 Glenn Orlin,
36 Right.

37
38 Council President Praisner,
39 My point is to clearly state the process. We've had problems getting Zoning Text
40 Amendments at the same time as master plans. What we're now saying is in addition to
41 Zoning Text Amendments that may be necessary to implement the master plan, coming
42 simultaneously with the master plan, we're also going to see amendments to this Bill,
43 law if there is a new road being introduced, type of road being introduced in the master
44 plan?



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1
2 Glenn Orlin,

3 The last example I remember was for the rustic roads amendment came over about ten
4 years ago and this proposal for country arterials and country roads. The master plan
5 was adopted but there's nothing in the code called country arterial or country road.
6

7 Council President Praisner,

8 But I'm just trying to follow-up on what the Vice-President was raising.
9

10 Councilmember Knapp,

11 And then to that point, so as master plans then come over, presumably then if there are
12 roads that don't conform one way or the other, then as a part of our master plan process
13 we will be making the appropriate modifications to all of those to get everything in sync
14 with everything else.
15

16 Council President Praisner,

17 They'll do it uniformly.
18

19 Councilmember Knapp,

20 Right.
21

22 Glenn Orlin,

23 When the master plans come over they, all the streets and roads in that master plan
24 area are classified in one of these categories.
25

26 Councilmember Knapp,

27 Okay.
28

29 Glenn Orlin,

30 What we're talking about is, in the case where they decide well there really is some
31 really unique thing going on on some particular road which doesn't fit --.
32

33 Council President Praisner,

34 No, I think Glenn he was speaking to the massive correction and the functional master
35 plan will do that.
36

37 Glenn Orlin,

38 Yeah.
39

40 Council President Praisner,

41 Not waiting for each master plan to come over.
42

43 Glenn Orlin,

44 What my understanding --.



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1
2 Councilmember Knapp,
3 However we do it, I just want to make sure we've got a framework or template in place
4 at some point in time, everything conforms with everything else and --.

5
6 Councilmember Floreen,
7 That's part of the follow-up to this right now. This is cleaning up some of the past lack of,
8 some of the past problems. Frankly, I would hope that we don't keep inventing new
9 roads.

10
11 Council President Praisner,
12 Me too.

13
14 Glenn Orlin,
15 Right.

16
17 Councilmember Floreen,
18 But at least this gets us all at the same, at square one with the same list of the code and
19 directing Park and Planning to create a complete list of everything else so everyone is
20 speaking the same language.

21
22 Glenn Orlin,
23 That's right.

24
25 Councilmember Knapp,
26 Okay.

27
28 Council President Praisner,
29 Here is my question. When you look at the definitions on circle 45 and 46, most of the
30 definitions are fairly generic, in nature, but when you get to tertiary and secondary, they
31 start to identify numbers of dwelling units.

32
33 Glenn Orlin,
34 That's right.

35
36 Council President Praisner,
37 Are we going to get in a situation where 202 dwelling units are in or fewer than, more
38 than 200 and you're going to say it can't be a secondary residential street but in every
39 other nature it walks like, acts like and is, but, whoops, it's got 202 units so it can't
40 qualify?

41
42 Glenn Orlin,
43 Well, the current law calls for this. This goes back to --.



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1 Council President Praisner,
2 I know that. I know that but we're fixing the current law.

3
4 Glenn Orlin,
5 Right I understand.

6
7 Council President Praisner,
8 And that's my question.

9
10 Glenn Orlin,
11 I don't recall this being an issue. I mean, if folks from the stakeholders who worked on
12 this, Edgar, Park and Planning staff want to come up and make a comment on that.

13
14 Councilmember Floreen,
15 I think it's helpful to have a number. I'll just speak from years back because the, it
16 defines a different characteristic. If you're serving, one road is serving a lot of vehicles,
17 you want it, that defines its function more and that's affected by the demand from the
18 community.

19
20 Council President Praisner,
21 So, any road that's more than 200 dwelling units is going to have to be a principle
22 secondary residential street or higher. It can't be lower than that.

23
24 Glenn Orlin,
25 Go ahead Edgar.

26
27 Edgar Gonzalez,
28 Under the code and under current practice, the Department of Permitting Services has
29 the authority to waive the requirement.

30
31 Council President Praisner,
32 Okay.

33
34 Edgar Gonzalez,
35 So it's already, a situation like that, that is borderline could be waived by the
36 department. They currently have the authority. They will continue to have that authority
37 and that's one of the things that we originally objected to the original Bill that it was too
38 strict. But on this one requirement it's consistent with what we had been practicing.

39
40 Council President Praisner,
41 So, my point of course, is we would be doing a master plan and identifying a certain
42 road classification but there's no development as yet, and then the development comes
43 in and it doesn't meet these numbers of development thereby not meeting the standard



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1 of what we've classified. You've answered my question by saying there's a mechanism
2 for waiving it. It just isn't listed here.

3
4 Edgar Gonzalez,
5 Right.

6
7 Council President Praisner,
8 And I wonder, is it somewhere else in the Bill?

9
10 Edgar Gonzalez,
11 Yes, It's in the law. The waiver --.

12
13 Council President Praisner,
14 It's not being, well, Edgar, I know it's in the law, or you've told me it's in the law, but this
15 is a comprehensive rewrite and I want to make sure we haven't eliminated it.

16
17 Edgar Gonzalez,
18 Okay.

19
20 Council President Praisner,
21 So, where in this comprehensive rewrite does the ability to waive those numbers exist
22 for permitting services?

23
24 Mike Faden,
25 While Edgar is looking for that language.

26
27 Council President Praisner,
28 Okay.

29
30 Mike Faden,
31 I would also point out some of these definitions use the key word meant to provide
32 access so that they don't draw hard and fast rigid lines.

33
34 Council President Praisner,
35 Okay.

36
37 Mike Faden,
38 They're statements of intention.

39
40 Council President Praisner,
41 -- solves my problem as well.

42
43 Mike Faden,
44 Right.



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1
2 Council President Praisner,
3 Okay. While you're look for the waiver, that's fine.

4
5 Edgar Gonzalez,
6 The waiver requirement is in circle 74 and subsequent pages shows the kind of waivers
7 that the Department of Permitting Services.

8
9 Council President Praisner,
10 Where does it say that they can waive the classification of a road? The requirements of
11 the classification?

12
13 Edgar Gonzalez,
14 Well, that's one of the items that may need to be addressed if we cannot find it here
15 quickly, that we specifically, as you said, there may be some loose ends and as the
16 Chairman said, there may be some loose ends, maybe that's one of them.

17
18 Council President Praisner,
19 It may be that it's here but I couldn't find it and I was trying to understand the
20 relationship.

21
22 Councilmember Floreen,
23 Typically, I think, and planning staff can correct me if I'm wrong, but I don't think that's a
24 secondary or a tertiary decision would be a the master plan decision so much.

25 Mike Faden,
26 Right.

27
28 Councilmember Floreen,
29 Because it's an internal subdivision kind of --.

30
31 Edgar Gonzalez,
32 Right.

33
34 Mike Faden
35 Right. Master plans don't designate secondaries and tertiaries.

36
37 Council President Praisner,
38 Right now. But they might since it's a road and a road classification, you're in essence
39 making a blanket judgment that some future master plan may not, may never go that
40 low but nothing says that they can't and if we've, and who knows, a community may
41 come in or a master plan advisory Committee may come in and want to identify that
42 classification level, you know, in our discussions. I'm just --.

43
44 Glenn Orlin,



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1 I understand.

2
3 Council President Praisner,
4 You know, if it's identified and it's a category of road and Planning Board can identify
5 categories of roads, there's nothing that says these cannot be identified in a master
6 plan.

7
8 Glenn Orlin,
9 Well, can we take this, -- consensus, if there's not language explicitly in the Bill, we'll
10 either add language or make some change here to provide that flexibility.

11
12 Councilmember Floreen,
13 Karen did you want to speak to the practice on this?

14
15 Karen Kumm Morris,
16 Yes, if I may.

17
18 Council President Praisner,
19 Please identify yourself.

20
21 Karen Kumm Morris,
22 Karen Kumm Morris with Park and Planning Commission. The primary and secondary,
23 tertiary streets are in the Road Code because we need some obviously small scale
24 streets to serve subdivision design. We don't designate in master plans subdivision
25 streets because they are generally parcels.

26
27 Council President Praisner,
28 But you are assuming that that's going to happen after a master plan is done. I'm not
29 prepared to assume that in every situation with small local areas of review that we're
30 going to be doing in the future, not massive master plans, that we aren't going to be
31 looking at, we talk about alleys in LMAs that we've had to look at, why couldn't we have
32 someone come forward and recommend that they are doing a secondary residential
33 street in an LMA or in a master plan or somewhere and there are certain standards
34 here? So, that was my only point.

35
36 Councilmember Floreen,
37 I'll just point out that there are many private roads that are not subject to this but would
38 be subject to standards imposed by the Planning Board and actually that is a source I
39 think, is that the issue that there's still some debate over?

40
41 Council President Praisner,
42 Yes.

43
44 Councilmember Floreen,



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1 But, the whole point is that there are public roads also, and often times in those
2 situations, where they get, the smaller streets may well be public, private streets subject
3 to a whole another kind of review and set of standards.

4
5 Council President Praisner,

6 So, if there are residential streets right now as you review the Road Code and the
7 master plan, the existing functional map amendments that you're going to do on roads,
8 isn't it possible that you might change a road that is now just a residential street to one
9 of these in your comprehensive review because it is a small, serves only a fewer
10 number of units and is a residential, a secondary and tertiary residential street actually?
11 If we go through more road abandonments they will all be.

12
13 Karen Kumm Morris,

14 I'm not sure we would go revisit all of our master plans to designate subdivision streets
15 such as tertiaries and secondaries and primaries.

16
17 Council President Praisner,

18 But you're going to leave every secondary residential or every residential street the way
19 it is and you're not going to review in the functional master plan any residential streets?

20
21 Rick Hawthorne,

22 If I might, I'm Rick Hawthorne with Transportation Planning. The thing is that these
23 streets are basically built and we built them because they had 200 or fewer units or 75
24 units so they're there and we would not go back and upgrade it because in part we built
25 them with a standard.

26
27 Council President Praisner,

28 Not upgrading. It's downgrading that you'd be doing. You're not up, the review of the
29 functional master plan that's going to go on after this is not going to be a down, is not
30 going to be an upgrade all the time, it could be a downgrade.

31
32 Rick Hawthorne,

33 We wouldn't change a street because the cross-section is there. There aren't any --.

34
35 Council President Praisner,

36 So, no roads that exist now you're going to change?

37
38 Rick Hawthorne,

39 Of the secondary. You had just asked would we change a secondary or tertiary. The
40 answer is no.

41
42 Council President Praisner,

43 Would you change a residential street and make it a secondary residential street or a
44 tertiary residential street?



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1
2 Rick Hawthorne,
3 No because then it would violate the standards that we've put here. We put them --.

4
5 Council President Praisner,
6 So, you're not going to take any residential streets and down, make them lower than
7 residential at this point?

8
9 Rick Hawthorne,
10 There's primary, secondary and tertiary, the candidates for minor arterial are primary or
11 arterial. It wouldn't be secondary or tertiary.

12
13 Council President Praisner,
14 And you don't think there's going to be a community that's going to come in and say we
15 don't want our road upgraded to a primary or a tertiary road, we want it left as, we want
16 it made a secondary residential street?

17
18 Glenn Orlin,
19 It won't be--.

20
21 Council President Praisner,
22 You don't think that --?

23
24 Glenn Orlin,
25 In regular master plans that could happen but in this functional, functional master plan
26 limit, it won't happen because the scope of it is, do you choose, what do you choose to
27 be a minor arterial. And the only candidates for minor arterial would be the classification
28 just below it which is primary residential which are identified in master plans or just
29 above it arterial which is also identified in master plans.

30
31 Council President Praisner,
32 And you don't think any community coming in that is primary residential and might
33 become a or might be upgraded which means that perhaps in the future more limited
34 options are available to them one way or the other, snow removal, speed humps,
35 whatever in the future, isn't going to argue for one of these instead and they're going to
36 start counting the number of units that come off that road and they're going to argue for
37 it? You don't think that's going to happen? Oh, I want that bet.

38
39 Glenn Orlin,
40 They can argue for it. I'm just saying it's not--.

41
42 Council President Praisner,
43 I want that bet.



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1 Councilmember Floreen,
2 Isn't that the issue that we had in Olney-?

3
4 Council President Praisner,
5 Yep.

6
7 Councilmember Floreen,
8 Where --.

9
10 Glenn Orlin,
11 No, that was, that was --. That was a higher level of road. It was arterial and they
12 wanted to be able to have speed humps on it so they were able to convince the Council
13 to designate it as a primary residential street but it wasn't primary or secondary.

14
15 Council President Praisner,
16 Well I just think you are going to have more than you think of folks coming in arguing for
17 a lesser categorization of their roads and they are going to use these arguments.

18
19 Councilmember Floreen,
20 We are not proposing that the current categories or treatments be changed. We are just
21 asking them to make a list for which there is an incomplete list at this point.

22
23 Council President Praisner,
24 No, I think you are also asking for master plan, functional master plan that is going to
25 change the categories. Councilmembers lights are on, let me go to them, I guess on
26 these issues. Councilmember Berliner.

27
28 Councilmember Berliner,
29 Council President Praisner. My question is somewhat related. Let me share with you
30 the conversation I had with members of my community with respect to Tilden Road,
31 alright, which is currently as I appreciate it a primary residential street. In which the
32 community has said to me, and again as a new member of this Council and not steeped
33 in the nuances of this that that classification has profound impact on the way in which
34 things are done on their street, the extent to which they can have calming measures the
35 extent to which they can have calming measures. They want to slow down traffic. They
36 don't perceive themselves in the same way as they perceive, the Department of Public
37 Works perceives them as a function of they're being a primary street. So my question to
38 you again is a variant of what I believe the Council President was talking about. Is, what
39 recourse is there for a community that seeks to challenge, if you will, that, their road's
40 classification? Is there any vehicle, did you consider that option, are we limited in so far
41 as the master plan locks that away and therefore the only time this issue can be
42 revisited is when the master plan itself is revisited which could be the answer-- .

43
44 Glenn Orlin,



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1 That's right.

2
3 Councilmember Berliner,
4 In which case --.

5
6 Glenn Orlin,
7 That is the answer.

8
9 Councilmember Berliner,
10 That is the answer.

11
12 Glenn Orlin,
13 The classifications are done when master plan limits and master plan action and what
14 this is trying to do is have the code match master plans in terms of the type of roads,
15 there's a, so there's a one to one synchronization. But changing classifications is a
16 master plan action. Now, if the specific issue is, they want regular parabolic speed
17 humps, rather than flattop speed humps, then that's, right now the policy is that if it's a
18 primary residential street, if it meets all the other criteria, it can receive the flattop speed
19 humps which are the ones that bring you down to 25 or 30 miles per hour. If you want to
20 have the more parabolic, severe speed humps, it has to be a secondary street or lower.
21 One of the follow-ups the T&E Committee's going to do is to have a full review of the
22 speed hump policy and the policy might change as a result, it might not. But it's
23 something that would follow from that and they might be able to get to their goal that
24 way or not. But we'd just determine that way. The classification itself which has a myriad
25 of implications, not just speed humps, is something that's decided in the master plan
26 because it has a myriad of implications.

27
28 Councilmember Berliner,
29 So when I read the language that said meant to that you identified previously, that there
30 was a time when the master plan was adopted that could legitimately have envisioned
31 this street serving a purpose that it has never truly served. In that context, there is still
32 no recourse for the community to say, you know what, you classify this in this manner,
33 the community has developed in a different manner so that our road was quote meant
34 to but is not truly a primary residential street and therefore what? Nothing until the
35 master plan is brought up again?

36
37 Glenn Orlin,
38 Unless you want to bring up a special master plan amendment for that or when the
39 functional master plan comes back, if you want to add that as a rider, I suppose you
40 could. I mean, I don't, if you want, I don't think --.

41
42 Councilmember Berliner,
43 I'm just exploring -- . (multiple voices). No, no.



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1 Glenn Orlin,

2 But process wise, again it's a master plan action whether it's part of a functional master
3 plan amendment, you know what functional means is you're not changing any of the
4 land use. You are just dealing with the function in this case of the roads and streets. Or
5 it's part of an update of the BCC master plan which was I guess last adopted in 1990.

6
7 Councilmember Berliner,

8 And you comfortably, or collectively comfortable that this is, should be the appropriate
9 response, that there should not be an adjustment or mechanism for reconsideration of
10 the classifications short of the master plan? Is that your considered view?

11
12 Karen Kumm Morris,

13 Yes, we feel that that would be a comprehensive and avoid a piecemeal kind of
14 approach simply, much like zoning land, land use.

15
16 Councilmember Berliner,

17 I wasn't pushing for an answer one way or the other, I just wanted to understand it.
18 Thank you.

19
20 Council President Praisner,
21 Councilmember Elrich.

22
23 Councilmember Elrich,

24 Hopefully a quick question. On circle 45. Language which I always find interesting. Like
25 for example a primary residential street has the caveat that although some thru traffic is
26 expected and then the primary, secondary residential street has language like meant to
27 carry somewhat more thru traffic. Do we have any idea what somewhat means?

28
29 Glenn Orlin,

30 It's relative to each other Mr. Elrich.

31
32 Councilmember Elrich,
33 Are we relative?

34
35 Glenn Orlin,
36 Pardon me?

37
38 Councilmember Elrich,
39 Are we relative?

40
41 Glenn Orlin,

42 Pretty much. The arterials, Rick will want to weigh in on this, but typically, obviously a
43 freeway is 100 percent thru travel and zero percent land access.



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1 Councilmember Elrich,
2 Right.

3
4 Glenn Orlin,
5 A major highway is overwhelmingly for thru travel although there can be in certain
6 circumstances driveways along the road. Arterials, the next one down from that, have
7 some local traffic on it and some access to and from the houses, but it's, you know, 60,
8 70 percent thru travel. By through travel I don't mean necessarily all the way across
9 County but certainly from one, from North Bethesda to Bethesda or Potomac to North
10 Bethesda or whatever. A primary residential street is primarily, is a collector street for
11 the neighborhood. Tilden Lane frankly is a collector street for the neighborhood. That's
12 the folks that come out to Tilden Lane and they go out to Old Georgetown Road,
13 primarily that way, so there, I got it in. But nonetheless, if you think of a neighborhood
14 and your neighborhood there's usually one or two streets which are the main roads off
15 of the arterial --.

16
17 Councilmember Elrich,
18 Right.

19
20 Glenn Orlin,
21 That people sort of come and go on.

22
23 Councilmember Elrich,
24 So Old Georgetown's the arterial, Tilden's the primary residential.

25
26 Glenn Orlin,
27 Actually Old Georgetown actually happens to be a major highway, but it's, you're right,
28 Tilden's a primary because it--.

29
30 Councilmember Elrich,
31 And Stagecoach would be the secondary residential?

32
33 Glenn Orlin,
34 I think it's the secondary, yeah.

35
36 Councilmember Elrich,
37 And then all the ones that dump into Stagecoach would be tertiary?

38
39 Glenn Orlin,
40 No, a lot, most of the roads are secondary but there are some tertiary streets which are,
41 have lesser standards but they tend, the tertiary tend to be the very, very localized
42 streets.

43
44 Councilmember Elrich,



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1 And how big an area do we consider when we're looking at like, you know, 200 dwelling
2 units or 75 dwelling units? How big is the universe for that?

3
4 Glenn Orlin,
5 Maybe you guys can answer that a little better.

6
7 Edgar Gonzalez,
8 The universe is all of the tertiaries that connect to that secondary, that's going to be
9 your universe. The tertiary streets are mostly cul-de-sacs, so they typically serve 10, 15,
10 20 units or thereabouts. In some cases they may go as much as 60, very unusual for
11 that to happen on a tertiary street. The code currently talks about less than 75. I don't
12 remember any tertiary street that, you know, that serves 75. So where that tertiary street
13 connects to another street is typically a secondary. So you count all of the units that,
14 and you can do that during the subdivision process. The issue that Ms. Praisner raises
15 is an important issue because you may have that within a subdivision but there could be
16 an adjacent subdivision that comes in the future that also provides that connection and
17 is not included in the master plan because we don't go that low. So I think that the
18 resolution to this issue is to grant the authority to somebody in the, I would say
19 Executive Branch to provide for that waiver and then that way you solve the issue.

20
21 Councilmember Elrich,
22 But does that mean, I'm trying to picture this, so a subsequent development comes on
23 board, the road is no longer adequate for the subsequent development but the road that
24 runs in front of the subsequent development may be added, but the cumulative effect of
25 subsequent plus existing is more than was envisioned for the previous segment of road.
26 Do we then go back in to change the road?

27
28 Edgar Gonzalez,
29 When that happens, in a situation like that, it would be so obvious that during the master
30 plan, this issue has been addressed and that road, where all of these others are
31 dumping is going to be a primary or an arterial or a major dual highway.

32
33 Glenn Orlin,
34 Well, one of the reasons why master plans lay out primaries is this very reason. There
35 could be a series of subdivisions that are built along the route where primary will go and
36 it tells the community right there, right when they move in the first subdivision, that's a
37 primary. It's not going to just be necessarily a couple of blocks. It could be a lot longer.

38
39 Councilmember Elrich,
40 Right.

41
42 Glenn Orlin,
43 I could think of an excellent example of that was just very controversial over the last
44 year or so, where the neighborhood fought extension of the road from one arterial to,



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1 actually one major highway to another, but it was master planned as a primary,
2 anticipating, this goes back 20 years, that there would be a series of eventually
3 development through there and that connection needed to be made as a collector street
4 for all the neighborhoods along that street. Not as a through route but as a way of
5 bringing people into and out of those neighborhoods.

6
7 Councilmember Elrich,
8 If we're thinking about the same street which is probably in eastern Montgomery
9 County, somewhere --.

10
11 Glenn Orlin,
12 Central.

13
14 Councilmember Elrich,
15 Somewhere between Georgia Avenue and --. We can debate whether it's a collector
16 street or whether it's going to be a cut thru street. But, I guess you've kind of answered
17 my question.

18
19 Council President Praisner,
20 Yes.

21
22 Councilmember Elrich,
23 I don't, there aren't any pictures in here? I've picked the right street haven't I?

24
25 Council President Praisner,
26 Yes you have.

27
28 Councilmember Elrich,
29 I thought so.

30
31 Councilmember Floreen,
32 Pictures are next year.

33
34 Councilmember Elrich,
35 Well, okay, how about illustrations? I think it would have been, it would be helpful to me
36 and maybe helpful to other people who are kind of glazing over it, the lengthy
37 descriptions is like a picture, you know, like a map of a subdivision with, you know,
38 here's an example of something we know and here's your, you know, the streets or
39 different classifications just to be able to look at it visually rather than read down this.

40
41 Glenn Orlin,
42 When we get to an issue that Mike's covering, I'll go downstairs and bring the master
43 plan of highways. It has all classifications for everything down to a primary and the local



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1 streets don't show up on there but those are the secondaries and tertiaries.

2
3 Councilmember Elrich,

4 I would have been happy with a little 8.5 by 11 just to along with this just to see here's
5 an example of this, this and this so that we could, I think to me it would be more helpful.

6
7 Councilmember Floreen,

8 And that's why these conversations and these designations are so important because it
9 guides the design requirements and the balance as between mobility, attention to
10 pedestrian, where you put the sidewalks, where you put the trees and particularly width
11 of lanes and what the community understanding of the function of that road is going to
12 be and whether it's designed really to prioritize through movement or slow down traffic
13 sufficiently so that it is a far more neighborhood functional street. The road people have
14 certainly been trying to do this for many years. But this is an effort to get, to develop
15 some consistency in the treatment. And the challenge is you really need primary or
16 higher level streets to carry loads of traffic as they add on so you protect the residential
17 character of the rest of the community or else you have way too much traffic on roads
18 that classically frankly were designed to carry more traffic because that was the thinking
19 at that point but you really don't want them to function that way. You want them to
20 function as neighborhood community environments with a focus on the pedestrian, the
21 bicyclists and the family usage as opposed to the primary to the drivers. So, that is,
22 again those design elements are not ones that we would ordinarily deal with but are
23 dealt with on a pretty regular basis down at Park and Planning as they review the,
24 actually, they are the ones really who set those characteristics and then work with DPS
25 in terms of the details of the permits and how that will all, at the final analysis.

26
27 Karen Kumm Morris,

28 And Councilmember Floreen, if I may just say, it is down at Park and Planning in the
29 preliminary plan step, where we go from the master plan's recommended street
30 classifications to sometimes proposals by developers to do more of a grid system of
31 streets so that primary or arterial that has a capacity to it is spread out over multiple
32 streets for instance, it's a more interconnected street system. And it's through the
33 preliminary plan process that we are able with, in concert to DPWT, evaluate the
34 capacity of that street system to, and I'm thinking specifically of Cabin Branch up in
35 Clarksburg, where this is what has actually transpired, is instead of a arterial 80 foot
36 right of way, four lane roadway, we now have two roads that are smaller but they carry
37 the same capacity of roads. And that would be an example of DPWT and Park and
38 Planning working together to satisfy the master plan's intent and yet have a street
39 system that is meeting the capacity of the intent of the master plan.

40
41 Councilmember Elrich,

42 I want to respond to that just quickly. I appreciate the fact you used the word grid. And I
43 think it's probably one of the lamentable things that people look back on the County
44 over the years and say that the greatest mistake that we ever made was getting the



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1 County off the grid because we wouldn't have this reliance on a couple of roads to carry
2 the traffic had we built a more sensible road system in the first place. But at the same
3 time I do think that inserting grids in small areas, and I consider Cabin Branch to be in
4 effect a small area, and knowing that all those people ultimately since they're not going
5 to be working up there, since there's not much, we know that's not where the jobs are
6 going to be, ultimately they wind up on other roads. And so, you know, we wind up
7 making these arguments I think for relatively short sections of roadway and saying this
8 piece is adequate and this piece is adequate and this piece is adequate but sooner or
9 later all those pieces wind up funneling on to something which wasn't designed to hold
10 everything that we're putting onto it. And so I'm glad you're thinking about grids but I
11 don't think the fact that you think about a grid in Cabin Branch means that we did, we
12 shouldn't be thinking really hard about where, when they get off the grid, what roads are
13 they going to get onto and can those roads hold it.

14
15 Councilmember Floreen,
16 Well that's why we are going to go the ICC --.

17
18 Council President Praisner,
19 That's not a grid.

20
21 Councilmember Elrich,
22 Did you have to say that?

23
24 Council President Praisner,
25 The ICC is off limits for today's conversation.

26
27 Councilmember Floreen,
28 Perhaps we could return to the -- .

29
30 Council President Praisner,
31 Not discussing any freeways at this point. Councilmember Ervin.

32
33 Councilmember Ervin,
34 Are we moving on?

35
36 Council President Praisner,
37 Yes. On these issues or on another issue?

38
39 Councilmember Ervin,
40 I'm on a classification but it's not tertiary.

41
42 Council President Praisner,
43 That's alright. Go ahead.



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1 Councilmember Ervin,
2 Okay. I wanted to speak to circle 46, item P and alley. And I know in the last T&E
3 meeting we had a conversation about some changes that I know that Glenn has made
4 to this language but it still, I still don't think it's where I'd like to see it. So --.

5
6 Councilmember Floreen,
7 As a little bit of background -- .

8
9 Councilmember Ervin,
10 Yes.

11
12 Councilmember Floreen,
13 Perhaps, we want to go into that.

14
15 Councilmember Ervin,
16 Well, the background has to do with some development that's happening in downtown
17 Silver Spring where some developers are looking at using alleys in different kinds of
18 ways. And so I'm really concerned about two things. One is the way you tried to fix this
19 language didn't really do anything. An alley is a right of way intended to provide, I
20 thought we were going to take out secondary and service, and that the sentence would
21 read, an alley is a right of way intended to provide access to the rear or side of lots or
22 buildings. Am I correct in that, in my assumption?

23
24 Councilmember Floreen,
25 That's actually right.

26
27 Councilmember Ervin,
28 Yeah, we didn't take it out.

29
30 Mike Faden,
31 No, we understood, Edgar can speak to their concerns, we understood that the
32 distinction was to be, we split it up into two sentences, that an alley normally would be a
33 secondary service access, not primary and that it would take a special designation by
34 the Planning Board and DPWT to allow --.

35
36 Councilmember Ervin,
37 That's my second issue.

38
39 Mike Faden,
40 Use as the primary vehicle access.

41
42 Councilmember Ervin,
43 Okay, well, who's going to make the final decision then if there's a dispute because that
44 leaves us back where we started?



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1 Mike Faden,

2 It probably does. The Committee conclusion in the end after, and you recall a lot of
3 discussion, was to make it a concurring situation so that both of the agencies would
4 have to agree before the alley could be the primary access.
5

6 Councilmember Ervin,

7 Is that going to be possible, I'm not even joking here, for both agencies to agree on this?

8 It may happen every now and then.
9

10 Edgar Gonzalez,

11 We already agreed in Committee.
12

13 Councilmember Ervin,

14 Okay.
15

16 Edgar Gonzalez,

17 We already agreed in Committee that that would be beneficial because one of the
18 problems that DPWT had and I think Park and Planning shared is the fact that the
19 existing definition of alley is a 20-foot right of way with a tiny little bit of pavement in the
20 specification. That if it becomes the primary access, people are going to be hitting the
21 walls of the building as they drive by and the road would deteriorate very rapidly so we
22 agreed that we would look together and look and come out, that would be one of the
23 first items that will develop, is a standard for when we were going to call something like
24 a CBD alley or something like that, something that Park and Planning would probably
25 name and that will allow people also, to provide people with pedestrian access to that
26 entrance as well as to have adequate setback so that the vehicles are not hitting the
27 walls on either side of the alley. So, that's, we committed to work together on this one
28 and I don't think that will be a problem.
29

30 Councilmember Floreen,

31 The language as proposed, as Mr. Faden rewrote it, says that an alley may be use to
32 provide primary vehicular access if the Planning Board and Director of Public Works
33 and Transportation concur that the dimensions proposed in a project, preliminary
34 subdivision or site plan would provide adequate primary vehicular access. So it would
35 be an agreement with respect to the dimensions.
36

37 Council President Praisner,

38 Well, what about the secondary service question? Is that the other question?
39

40 Councilmember Floreen,

41 No, --.
42

43 Councilmember Ervin,
44



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1 That's my other questions because--.
2
3 Councilmember Floreen,
4 That's addressed already I think.
5
6 Council President Praisner,
7 Are those words supposed to be there or not?
8
9 Councilmember Floreen,
10 No, they are.
11
12 Edgar Gonzalez,
13 At the beginning yes.
14
15 Councilmember Floreen,
16 That was not, we didn't change that in the committee.
17
18 Council President Praisner,
19 Okay.
20
21 Edgar Gonzalez,
22 Yes, because the existing alleys, that's what they do.
23
24 Council President Praisner,
25 The secondary service.
26
27 Councilmember Floreen,
28 Yes.
29
30 Edgar Gonzalez,
31 They are secondaries.
32
33 Council President Praisner,
34 Okay.
35
36 Councilmember Ervin,
37 Unless, but I just need to be really clear before we leave this.
38
39 Councilmember Floreen,
40 Sure.
41
42 Councilmember Ervin,
43 Unless in the example of a particular development in the CBD, what happened in that
44 situation?



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1
2 Karen Kumm Morris,

3 Well, I'm not going to speak specifically to that but I do agree with Edgar that a 20-foot
4 alley is insufficient to – as a primary access point providing access to an underground
5 garage and service and, so I was assuming we would be spending the next year
6 together working on a Committee to develop a CBD alley that was sufficiently wide to
7 accommodate this standard.

8
9 Glenn Orlin,

10 And before you think that's a new classification, it's not.

11
12 Councilmember Ervin,

13 I know that.

14
15 Glenn Orlin,

16 I see looks like wait a minute. We were just there. The classifications each will have
17 probably, I don't know how many, it could be a half-dozen or a dozen different design
18 standards within that classification, depending on the individual circumstance. So,
19 you're going to end up with a book. We have a book like this today of design standards,
20 you're going to end up with a book at least probably this big as a result of the next year
21 and, but it still will have the same function of serving as a secondary access.

22
23 Mike Faden,

24 And so this, just to wrap it up, what this last sentence does is allows, in the meantime as
25 well as after that, as those standards are developed, a case by case review for the two
26 agencies to agree on particular sites.

27
28 Councilmember Ervin,

29 But it does, I'm just saying, the sentence says if the Planning Board and the Director of
30 Public Works and Transportation concur, what if they don't?

31
32 Unidentified

33 Nothing.

34
35 Councilmember Ervin,

36 Nothing happens.

37
38 Mike Faden,

39 Right.

40
41 Unidentified

42 That's right.

43
44 Councilmember Floreen,



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1 But it's only as to the dimensions?

2
3 Mike Faden,
4 Right.

5
6 Council President Praisner,
7 Well, if they don't agree on the dimensions, then it's not a primary vehicle access.

8
9 Councilmember Floreen,
10 Right.

11
12 Council President Praisner,
13 It's an alley.

14
15 Councilmember Ervin,
16 It just seems --.

17
18 Mike Faden,
19 The Planning Board then approves the subdivision but can't--.

20
21 Council President Praisner,
22 Can't use that as the primary access.

23
24 Mike Faden,
25 Right.

26
27 Karen Kumm Morris,
28 If that continues to be a concern, of course we'd be happy to make the call at the time of
29 the preliminary plan but I think we're in agreement --.

30
31 Unidentified
32 So would we.

33
34 Karen Kumm Morris,
35 Yeah, we're in agreement that the 20-foot alley today is insufficient. And you know, but
36 if you have to say it's one of the agencies has to be the final call on this, it should
37 happen at the preliminary plan and it is in the context, could happen in the context of the
38 project plan and preliminary plan review by Park and Planning. I think in the terms, in
39 interim, there's ongoing development going on that's under the old language and until
40 we can work this out in a year, we'll probably, we're aware of this issue, and perhaps
41 what we can continue to do is work together site by site to try to forge sufficient right of
42 way. The problem is that the developer isn't, well, the developer is going to be operating
43 under the old laws too, which is the 20-foot right of way and would have to be willing to
44 grant us sufficient right of way to accommodate it's primary access.



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1
2 Mike Faden,

3 This does allow interim flexibility. This language will kick in in 90 days and even though
4 the new standards won't be developed for a year or so, the old standards are in place,
5 this language allows the joint modification.

6
7 Council President Praisner,
8 Councilmember, oh, I'm sorry, are you still on Marc?

9
10 Councilmember Elrich,
11 Yeah, I had a question about that. Does, the current language allows primary access to
12 an alley?

13
14 Edgar Gonzalez,
15 No.

16
17 Councilmember Elrich,
18 So, how would the developer continue if the current language doesn't allow primary
19 access to an alley?

20
21 Mike Faden,
22 Using this language here for --.

23
24 Councilmember Elrich,
25 I figured as much.

26
27 Mike Faden,
28 And we have actually done it in a couple of cases lately. It's under the general, DPWT
29 general labor authority.

30
31 Councilmember Elrich,
32 I mean, I've got to say, I am not comfortable with providing primary access through an
33 alley. I think it raises some serious, you know, at least in some areas, serious traffic
34 concerns unless you are going to make the thing function almost like a street.

35
36 Councilmember Ervin,
37 I think it depends on the project.

38
39 Councilmember Elrich,
40 I'm thinking about where these projects are.

41
42 Councilmember Ervin,
43 I am too but it depends on the project.



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1 Council President Praisner,

2 Well, all this says is that the two have to agree in order, they have to work it out so it's
3 going to be project by project specific and it's going to relate to the design and the width
4 and the access and egress proposed. Okay, I'm going to call on Councilmember
5 Andrews.

6
7 Councilmember Andrews,

8 Thanks. I would like to have some comments from the fire and rescue service about
9 how they see the different changes in the plan affecting their role in County government.
10 It's not clear, I didn't see any discussion about how the changes affect them. I see a
11 couple of things in the Bill that reference them, circle 50, 15 feet for an intersection of
12 open road – for fire and rescue vehicles in the form of rolled or mountable curbs and I
13 see grass shoulders must be load bearing at specific locations, but except for going
14 through and trying to find them in the Bill, I don't know how this Bill affects them
15 differently from how the current code affects them so I would, I was the one, I was one
16 of the people at least who thought it'd be very helpful to have a comparison of what the
17 current Road Code does in relation to the changes here. Because you were intimately
18 familiar with the Road Code and we're not, so a comparison of what the Committee did
19 compared to what existed in terms of the amendments is still not enough for me to
20 understand the changes that this Bill would bring about. And I really would like to have
21 some comments from fire and rescue and we have a good representative here and may
22 be satisfied with the Bill but I don't see any discussion about what the changes are that
23 were made in relation to the fire and rescue service and how it affects them.

24
25 Councilmember Floreen,

26 Let me just say that certainly all the players will be at the table as they work through the
27 design standards, the details, most of the details, so that is an element of this that we're
28 not getting into at this point. But certainly the issue of their being able to maneuver
29 sufficiently around corners and the like are key elements of all this and we hope that
30 they've been addressed here. Okay.

31
32 Mike Donohue,

33 Mike Donohue, Assistant Chief with Montgomery County Fire Rescue Service assigned
34 to the Office of the Fire Marshall. For the most part, and I'll categorize that, for the most
35 part, the existing draft does a very good job of addressing our issues. It would require
36 that we look at things on a case by case basis. In some areas, for example, the 15-foot
37 return radius on turns, there's language in there that says that's acceptable provided
38 that it provides a mountable curb or some way that we can get vehicular traffic around it.
39 That works for us. We're performance based. That's how we design, how we like to see
40 things done. Of course, the caveat that has to go along with that is you can't put a street
41 light or anything along there right in the middle of the turn because then it gets away
42 from our need. So we do have those issues. If there's one particular thing that we are
43 concerned with within the current language is that is a lack of definition for fire
44 department access road. We feel that if there is one in there then that really clarifies



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1 what we are looking for because not every road needs to be a fire department access
2 road. And one of our concerns, at least within my staff is that if we make every single
3 turn 15-foot return radius, it doesn't need to be that way, so you'd have to have
4 mountable curbs or it has to be allowance for people to be able to cross that. So you
5 have to be able to look at the access to the buildings so that not every road has to be a
6 fire department access road. And that's a critical thing for us. And of course we define a
7 fire department access road as going from any given fire rescue station, the closest one
8 to whatever building we choose and we only need one to get to any particular building,
9 so that's probably our biggest issue if there is any. But for the most part this Bill does a
10 very good job of addressing our needs.

11
12 Glenn Orlin,

13 Let me just mention, actually the, -- up do date with this, but the curb return, the curb
14 radius language is actually taken out of the Bill by the Council, by the Committee and
15 we suspect that it will be a standard that will be included in the design manual in the
16 course of the next year but in fact there's not, not only was it taken out of the codified
17 portion of the law, it wasn't even put in the uncoded portion. So, if for some reason,
18 the deadlines are not met, there's no requirement for a 15-foot curb radius but hopefully
19 that's something that will be addressed. In terms of the fire access roads, that's again
20 something, since you'll be part of the team, just a major part of the team --.

21
22 Mike Donohue,
23 Thank you.

24
25 Glenn Orlin,

26 The, whether you want to be or not, is actually a definition of more specifically what a
27 fire access road is because that will help the group figure out what roads need to have
28 that kind of treatment so --.

29
30 Mike Donohue,

31 We do recognize that there are standards that will be subsequent to this and it gives us,
32 if there's nothing that's specifically our concern, we do get a second bite at the apple
33 here.

34
35 Councilmember Floreen,

36 And that's the intention throughout that. We are not trying to pre-resolve all these issues
37 in advance but respect everybody's participation and it's just fascinating, if you start
38 talking you find out actually everybody up there really does agree on all this stuff. It's
39 just making sure that the long term product is meaningful to all of them.

40
41 Council President Praisner,
42 Does that answer your question?

43
44 Councilmember Andrews,



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1 Well, so to be continued is the answer?

2
3 Glenn Orlin,
4 Right.

5
6 Council President Praisner,
7 Yeah.

8
9 Councilmember Andrews,
10 All right. What about the plan in terms of road classification? You intend to come back
11 with a functional master plan, amendment to the functional master plan regarding all
12 changes to roads in master plans that you think need to be changed. How do you
13 anticipate that happening?

14
15 Glenn Orlin,
16 The only, what this calls for is that there be a functional master plan amendment to
17 figure out if any of the existing roads that are already classified out there need to be
18 reclassified as to either a parkway or to a minor arterial. Rick may want to talk about
19 this, but there's another work program item that the Planning Board has which is more
20 general having to do with the master plan of highways and transportation so there may
21 be some other changes they may do as part of that amendment, that review, but all this
22 Bill is looking forward to is that those specific two classifications. Because there aren't
23 any, obviously there aren't any parkways, there aren't any minor arterials in master
24 plans now and the only way you could do that is with a functional master plan
25 amendment or unless you want to wait for the next 25 years for each of the master
26 plans to be updated to do it piecemeal which we wouldn't recommend.

27
28 Councilmember Andrews,
29 When would you anticipate coming back with those recommended changes?

30
31 Glenn Orlin,
32 That's really sort of up to you in terms of the work program, the --.

33
34 Council President Praisner,
35 It's a park, would be a Park and Planning work plan.

36
37 Glenn Orlin,
38 Yes.

39
40 Council President Praisner,
41 And we'd have to amend the work plan I believe since it's not in there as yet and define
42 when that work would be done, correct?

43
44 Larry Cole,



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1 Larry Cole with Park and Planning. Right now, the general updates in master plan
2 highways is scheduled for FY09. So it, and that's, what that is intended to do is, you
3 know, the general update has not be done in many years so we've had a lot of
4 amendments and a lot of master plans and sector plans and this is to make sure that
5 we, you know that we basically wipe the slate clean. We go ahead and adopt a master
6 plan as we know it to be right now. There are a couple of little gaps like West Bar has a
7 bunch of roads in it that actually aren't classified even though they're in the master plan
8 so that is basically a general clean up work so it, I guess it would be possible depending
9 on the other workload to fold this into it although this might take a little bit longer to do
10 because it requires more community input than the update we're considering to do right
11 now.

12
13 Council President Praisner,
14 Right, it might require more work years or more from a program budget perspective,
15 more staff time.

16
17 Rick Hawthorne,
18 It would also be better to know the cross-sections and things. It would also be better to
19 have done the chapter 50 work before we did that as well.

20
21 Council President Praisner,
22 Okay. Does that answer?

23
24 Councilmember Andrews,
25 For now, thanks.

26
27 Council President Praisner,
28 One other question. In your packet Glenn on page 2. The minor arterial has in
29 parentheses some of the characteristics of arterial streets, -- prohibitions on throughway
30 traffic. That depends upon other things like where bridges exist, they may not be able to
31 take the weight, et cetera.

32
33 Glenn Orlin,
34 That's true.

35
36 Council President Praisner,
37 But there are some on arterial roads.

38
39 Glenn Orlin,
40 That's true. But the, in terms of the, what I was referring to is there's an ordinance which
41 allows the Department of Public Works to restrict trucks or prohibit trucks on primary
42 residential streets or lower for neighborhood protection reasons.

43
44 Council President Praisner,



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1 And it might have to include minor arterial. My only point is the parentheses is not
2 exclusive and limiting to all arterial streets right now.

3
4 Glenn Orlin,
5 If a bridge is --. (multiple voices).

6
7 Council President Praisner,
8 There are all kinds of things that are associated with that.

9
10 Glenn Orlin,
11 That's right.

12
13 Council President Praisner,
14 There may be limits on truck traffic related to other issues.

15
16 Glenn Orlin,
17 That's right.

18
19 Edgar Gonzalez,
20 Well, on the weight restriction, hopefully that's a temporary condition.

21
22 Council President Praisner,
23 Not the ones I've seen. They have been there for a while.

24
25 Edgar Gonzalez,
26 Well, but that's still a temporary condition.

27
28 Council President Praisner,
29 I don't know about that. Okay, let's move to design standards.

30
31 Glenn Orlin,
32 Okay, this is the, actually the bulk of the discussions in the worksessions was in this
33 area and so we'll take some time on this. That's right. That was an easier issue we just
34 covered. The design standards is a basis --.

35
36 Councilmember Floreen,
37 Let's wait till we rewrite the zoning code.

38
39 Glenn Orlin,
40 Yeah, oh yeah, good luck with that one.

41
42 Council President Praisner,
43 Classification by classification.



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1 Glenn Orlin,

2 I want to draw here the distinction between how the Bill was introduced and where the
3 Committee ended up which is in a very different place than when we started in four
4 different ways. First of all, when the Bill was introduced it specified certain dimensions,
5 lane width, curb return radius, you know, how tight the turns are at intersections,
6 sidewalk width, bikeway width and other dimensions that would be permanently set in
7 the law. It would be actually physically a table in the law. And that the Executive was to
8 then come back and develop the more detailed design standards which are a whole
9 book of these things, just one example, cross-sections like this which would have slopes
10 and which have where the curbs are and what the width from the end of the right of way
11 would be, the depth of pavement, all of this would be produced based on the values in
12 the law. The Committee's recommendation however was to change that and to have a
13 table that's similar to that but put it in the uncodified portion of the law which is now at
14 the back which is circles 127, 128 and the notes on 129 and top of 130 which
15 essentially provide a guide to the process over the course of the next year by which the
16 Executive Branch with the affected stakeholders would develop executive regs, method
17 to executive regs that will then come back to the Council for approval. And the values in
18 the uncodified table would only go in effect if in fact the deadline is not met. And let me
19 just talk about the deadline. The deadline is that within 12 months of enacting the Bill,
20 the executive regs would be transmitted to the Council unless the Council during the
21 year sometime decides it wants to extend the deadline for the Executive and the
22 situation may be that they are close, but they are not quite there, they need a couple of
23 months and you would be asked to extend the deadline for a couple of months and you
24 could do that. But the idea is to in fact get these regs produced in a timely fashion so
25 they'll actually have some effect. Within three months after the Council gets these
26 executive regs, you need to act on them, up or down. And if in fact you don't approve
27 method II regs, then again this table values goes into effect and becomes law, unless
28 again you go back and change the law. But the idea is that these numbers in the back
29 would be a guide to the Executive Branch, but not prescriptive. But it would be a default
30 in fact if the deadlines are not met. The table itself is different than what had been
31 proposed in December. If you look on circles 126, 127, and 128, there are two new
32 columns in this table. One is called target speed and the other, the third one over is
33 curbside width. These are concepts that came to us from the Planning Board's
34 recommendations. Target speed, there's a definition in here, which I'll try to find, but it
35 essentially what it is, it's the speed at which we're designing the road so that drivers will
36 feel comfortable at that speed. It's not, it's not the --.

37
38 Council President Praisner,
39 Not the speed printed on the sign.

40
41 Councilmember Floreen,
42 Not the posted speed.

43
44 Council President Praisner,



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1 It's not the posted speed.

2
3 Glenn Orlin,

4 Well, let me just find this. I think it's important to get the actual definition because it's
5 clear. We had a definition in here I believe.

6
7 Edgar Gonzalez,

8 Target speed is not defined.

9
10 Glenn Orlin,

11 Yeah.

12
13 Edgar Gonzalez,

14 And in the discussions on the T&E Committee, it was clearly established that target
15 speed was pretty much the way it was being used, the speed limit.

16
17 Glenn Orlin,

18 Right.

19
20 Council President Praisner,

21 Well, target speed is, I mean, there is a discussion, or has been of the speed at which x
22 percent of drivers can safely drive. It's not necessarily the speed limit.

23
24 Edgar Gonzalez,

25 Yeah, the problem with, we had a problem in the Executive Branch with the target
26 speed mentioning but it was, it came out, the definition that were discussed during the
27 T&E Committee sessions was a definition that came from an IT proposed manual and in
28 the definition in that proposed manual, they defined what target speed is and at the end
29 it says it is typically the same as the speed limit.

30
31 Glenn Orlin,

32 And I suggest, although it's not in the Bill here, that we add that language that was in
33 the Committee packet. I'm sorry, I thought it was in here, but it's an oversight. But we
34 had agreed in the Committee level as to what the definition of target speed was.

35
36 Councilmember Floreen,

37 In any event, and we brought in experts as well to advise us on these kinds of details
38 and I think the feeling of the Committee is let's set a goal for those conversations and if
39 the group can come back with consensus on these details, and even some of these
40 categories, if that is a consensus based document, our expectation would be that we
41 would be okay with it. But there are a lot of players here with very strong feelings as to
42 all the different elements.

43
44 Council President Praisner,



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1 I guess I'm not sure then. And I want to make note Councilmember Leventhal has to
2 leave and I've told him that we will not take a vote today. We'll use this as a
3 worksession and go through formal action next week hopefully having the document
4 finished and minor if any changes that would come forward. George, did you want to
5 comment?

6
7 Councilmember Leventhal,
8 I just want to thank the Council President. I did have the benefit of much of this
9 discussion in Committee.

10
11 Council President Praisner,
12 Being in Committee.

13
14 Councilmember Leventhal,
15 Thank you very much.

16
17 Council President Praisner,
18 And that's part of the reason why. My point again is, are we saying that we are going to
19 put a definition for target speed in here or no?

20
21 Glenn Orlin,
22 I think we should. And it should be the definition, I'm sorry I didn't bring it with me, but it
23 was in an earlier packet of T&E, there's so many early ones, which actually had a
24 definition that all, at least everybody at the Committee and the table agreed with.

25
26 Council President Praisner,
27 Okay. So, there are two things we've talked about today so far that will be modifications
28 that need to be added. One is the waiver for DPS on the classification issue and the
29 second is a definition of target speed.

30
31 Mike Faden,
32 Whatever the appropriate point is, I want to go back to that waiver question.

33
34 Council President Praisner,
35 Okay.

36
37 Mike Faden,
38 Because I think the Bill already sufficiently covers that but when you want to.

39
40 Council President Praisner,
41 Okay.

42
43 Mike Faden,
44 I'll explain why.



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1
2 Council President Praisner,
3 All right. Okay. (multiple voices).

4
5 Councilmember Elrich,
6 Ask a question about target speed?

7
8 Council President Praisner,
9 Yes, go ahead. Target speed is the subject of the day right now.

10
11 Councilmember Elrich,
12 At the moment. I think it matters when you assess the target speed because that's going
13 to have a serious impact on the design. I mean target speed in free flow conditions
14 might, you know, might allow for design of one type and trying to achieve your target
15 speed in less than ideal traffic conditions would result in a design of a different type. So
16 I'm kind of interested in not just, you know, you're going to try to achieve the speed limit,
17 but are you going to try to achieve the speed limit with 1600 cars going through the road
18 an hour, are you going to try to achieve the speed limit at the normal traffic flow say at
19 9:00 at night?

20
21 Edgar Gonzalez,
22 Councilmember Elrich, this is one of the discussions, this is one of the problems with
23 this definition of target speed. That is why we accepted the definition in the Committee
24 because it was followed period and is equivalent or is typically the speed limit. Because
25 the speed limit is there, regardless of whether you have 1 million vehicles or two
26 vehicles. And that's why, and also during the design process, when you are designing a
27 road, you need to know what design speed you are going to use. And that design speed
28 typically, it could be up to 5 or 10-miles ahead of the, you know, larger than the speed
29 limit. Lately the current literature is try to design for the speed limit. So it is much easier,
30 much better, much clearer to everybody, speed limit. That everybody understands.
31 Target speed, okay. It's up in the eye of the beholder.

32
33 Glenn Orlin,
34 I guess the point was though that we didn't want the Road Code actually specifying the
35 speed limit, setting the speed limit for every individual street in the County. That's why
36 we're using this.

37
38 Councilmember Floreen,
39 We didn't want to intrude on your authority in that department.

40
41 Glenn Orlin,
42 Exactly.

43
44 Council President Praisner,



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1 Vice-President Knapp.

2
3 Councilmember Knapp,

4 Thank you Madam President. So, here we are in design standards and it appears as
5 though, I guess my question, who owns this? If there is a modification to be made, who
6 gets to make, who ultimately gets to make that decision and who gets to weigh in on
7 that decision so that the decision is actually made and something isn't held in limbo for
8 however long?

9
10 Edgar Gonzalez,

11 Under current law, DPWT is in charge of the standards and we are supposed to come
12 to you whenever we are changing standards, come and make sure that the Council is
13 okay and under current law, your secretary is supposed to keep track of all of the
14 standards and make them available to the public.

15
16 Councilmember Knapp,
17 Okay.

18
19 Edgar Gonzalez,

20 But that certainly hasn't happened, but right now, today, --.

21
22 Council President Praisner,
23 That's because nobody asked her.

24
25 Edgar Gonzalez,

26 No, oh no, but we haven't come to you in the last few years.

27
28 Council President Praisner,
29 Right.

30
31 Edgar Gonzalez,
32 That's also --.

33
34 Councilmember Knapp,

35 But that's globally as to the standards broadly defined.

36
37 Edgar Gonzalez,
38 Yes.

39
40 Councilmember Knapp,

41 So, here we talk about spot deviations from standards can be made by DPWT or DPS
42 and a, but a general deviation from a standard must be approved by the Planning
43 Board. So if in a certain situation, DPWT or DPS determines that a spot deviation needs
44 to be made, does the Planning Board get to weigh in on it? Does Park and Planning say



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1 yeah or nay? Or do you guys just make the change and it's okay and then sometime
2 later they find out that some change had occurred?

3
4 Edgar Gonzalez,
5 Okay, maybe Glenn can give the history on how we arrive at this language.

6
7 Glenn Orlin,
8 Yeah.

9
10 Council President Praisner,
11 Welcome to the table --.

12
13 Glenn Orlin,
14 Let me work through the other interchanges because you were actually wrapping a
15 couple of other things which were involved with this. Just to follow through the rest of
16 the chart on page 3, this process we talked about, originally the Bill said the Executive
17 Branch can you do that in four months and that has been extended to a year with the
18 possibility of the Council extending the deadline. The Bill would say that those
19 standards would take effect when the Bill takes effect. But in this case, the design
20 standards would take effect only if the Executive doesn't transmit the regulations within
21 12 months. Talked about that a bit earlier. Here, the deviation, this is a big difference,
22 the, in the original Bill, it didn't draw a distinction between spot improvements and whole
23 lengths of road or large lengths of roads. And recognized very quickly after having
24 deliberations with the Executive Branch, there are a whole host of details in designing a
25 road where at a particular spot, you might have a slightly wider lane width, slightly wider
26 sidewalk or narrower sidewalk, you might have a different curb radius at that
27 intersection because of the corner, because of the --.

28
29 Councilmember Knapp,
30 I don't disagree with any of those points. I just want to know who owns the decision and
31 then how that decision ultimately gets communicated back to all of the parties that care
32 in the process.

33
34 Glenn Orlin,
35 The spot improvements would be DPWTs or DPS's, depending on who is responsible in
36 a typical case.

37
38 Councilmember Knapp,
39 How does it get to them? So, a project is moving forward as DPS is ready to issue
40 permits, they would say oh, wait a minute, it would appear as though there should be a
41 deviation from what the guidelines are and we can therefore in issuing this permit say
42 that the number should now be this as opposed to whatever it had been before.

43
44 Glenn Orlin,



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1 That's right.

2
3 Councilmember Knapp,

4 And when they make such a change is it then communicated all the way back down the
5 chain of command so that Park and Planning which had originally approved whatever
6 they approved through development review or some other process, says, oh, okay, so
7 now it's appropriately captured within the documentation so when we get to a place, say
8 Clarksburg, and the road widths don't necessarily match with all the other
9 documentation along the way, there's some way that we can track that?

10
11 Glenn Orlin,

12 Typically they work together on this type of thing anyway. I'm not sure how formal the
13 communication would be but maybe these folks could speak to that. I mean, if there's a
14 permit, if there's a road that's permitted improvement that Park and Planning requires as
15 a condition of subdivision and ultimately DPS gives a permit, how is that communication
16 done?

17
18 Mike Faden,

19 The really short answer to your question is that the Bill does not specify a notification
20 system for those deviations.

21
22 Councilmember Knapp,

23 That would seem to be a good thing to put in there, it just seems to me so that if we
24 want to make changes that somebody knows we actually made those changes and we
25 can track them so we know what occurred.

26
27 Glenn Orlin,

28 Guess, well, one of the -- I want to comment on, it seems like that might be fairly
29 laborious.

30
31 Councilmember Floreen,

32 This would, what you're referring to is a site plan issue, which typically would be pretty
33 much within the purview of Park and Planning. The permit on the road -- .

34
35 Councilmember Knapp,

36 Hold on. But let me give you a for instance.

37
38 Councilmember Floreen,

39 Yeah.

40
41 Councilmember Knapp,

42 We waited for five or six months last summer, and in fact, we couldn't, the pool, in
43 Clarksburg Town Center could not be opened because there was a back and forth
44 between where you could actually have an egress to the pool that could be accessible



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1 by fire and rescue. According to DPS, it had to be in one place. According to Park and
2 Planning it had to be somewhere else. Neither was necessarily wrong. But no one
3 necessarily owned the ultimate decision. And as a result, the dog kept chasing its tail for
4 four or five months. And as a result, the community ended up stuck in a situation where
5 they couldn't access their pool, or access their pool facility, I'm sorry. The pool could
6 actually be accessed but the building couldn't, the rec building. And so I think that's a
7 perfect example of everyone doing kind of what they do and no one ultimately owning
8 the process, and so while this sounds great, but if nobody owns the notification, no one
9 own it and then has to communicate it all back, while laborious, people end up stuck
10 while we don't make decisions.

11
12 Paul Folkers,

13 If I could chime in for a minute. Paul Falkers, County Executive's Office. This is kind of
14 getting into a key area of concern for the County Executive and just what I wanted to
15 say, just a general way, the County Executive is supportive of this Bill and appreciates
16 the Councils' focus on this, interest on this and hard work in encouraging all the parties
17 to come together and work on this. But I think this is getting to a key issue that does
18 have concern for the County Executive, and I think the specific language that you've
19 identified here does seem to confuse responsibilities which causes us concerns for the
20 reasons that you've gotten into. And certainly the communication needs to take place.
21 What I'd like to do if I could, is, -- has been the issue manager for us on this. I'd like to
22 ask her to come and address those specific concerns relative to that language.

23
24 Councilmember Floreen,

25 Well, if we could address Mr. Knapp's question in the access to the pool question. Was
26 that a Road Code issue that drove that debate?

27
28 Edgar Gonzalez,

29 It wasn't DPWT I know that.

30
31 Councilmember Floreen,

32 It wasn't DPWT's fault. Oh good.

33
34 Unidentified

35 As Edgar runs from.

36
37 Councilmember Knapp,

38 But hold on. I don't want delve into whose fault it was because that's not the issue, but I
39 think the --.

40
41 Council President Praisner,

42 (multiple voices) No one was in charge.

43
44 Councilmember Knapp,



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1 No one was in charge and as a result, no decision was being made. So all I want to
2 make sure is we get to a point that whoever owns it, it's clear that they own it and then
3 have to communicate whatever decision or action was taken and that's the only thing I
4 don't see here so we need some language to address that, then let's draft some
5 language to address that.

6
7 Glenn Orlin,

8 Well, it's clear whose decision it is, but -- in answer to your question, is there's no
9 required notification in the law itself.

10
11 Councilmember Floreen,

12 But was that a deviation issue? We're talking about something that deviates.

13
14 Glenn Orlin,

15 No, this particular example was not a deviation issue.

16
17 Councilmember Knapp,

18 Well, no but as Glenn just described it, there's going to be a fair level of discretion in a
19 certain roadway that we need to for whatever reason make it 11 feet as opposed to 12
20 feet which DPS is going to make that decision. Which once you track it back through the
21 land use process, it's going to impact other decisions that were made and people need
22 to know about it and that's I guess the biggest piece is just so we've got the information,
23 we know the decision and the change that was made because it may also crop up
24 further down the line on the same road or on other roads in the same community and it
25 will be cited as a precedent or as a reference.

26
27 Unidentified

28 Mr. Knapp, if I can. -- with office of the County Executive. We are hoping the new
29 process is going to lessen those confusions and I think you are absolutely right. Right
30 now, because of our Road Code, the limited standards we have, we have evolved, the
31 standards are old. So the main goal of this whole process is just to address the issue
32 identified. County Executive strongly believes at the end of the day, as far as
33 implementing those standards, that lies in the Executive Branch. So we are going to
34 work with other parties involved to get to that point. But it's not going to be only
35 delivering the standards, you are going to come up with a process, even documenting
36 how the waivers were issued, why the waivers were issued, as far as the access point
37 you mentioned in Clarksburg, that's a great example of how, I guess we did not
38 communicate well. We are hoping the standards, not that they are going to have new
39 options for developers to pick and choose and for the agencies to enforce. It's going to,
40 we need to come up with a process. And I think that's where this is, we ask the Council
41 for additional time because this is not, this is a complex issue. It's needed to be, we
42 need to fix this and we need to fix it right. That's why we need time to do this. So, yes, it
43 is going to identify all the roads. And I really believe a lot of our efforts are going to be
44 just spent right there to clarify these issues, the process.



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Councilmember Knapp,
Okay.

Unidentified

But to reiterate just what Paul said, we strongly believe the language that is, I think section 49 32, we strongly oppose to that. We believe the authority to make fundamental changes or any change within public rider should lie in the Executive Branch and not to be given to the planning body of the government.

Glenn Orlin,

This is the issue I was going to hit next, which is actually the part of the last part of the table. That talked about deviations, but the basic Bill that the Council introduced back in December said that although there will be these standards that the Council on CIP projects can set an alternative standard for a particular situation, and the magic words are special circumstances warrant, but it also, which actually is a authority you have now and you've exercised now on that, so we've just essentially it's built in suspenders. What's different is for road improvements which are made as a condition of subdivision or site plan approval, that in the past, currently, the Executive Branch makes those final decisions about the dimensions that, width of lanes. This would allow the Planning Board, if special circumstances warrant, to adopt a different standard for a particular road if there is something special going on. The language is on .

Councilmember Floreen,
Circle 46.

Mike Faden,
Bottom of 46, starts on --.

Council President Praisner,
Lines 1195 through the next page.

Mike Faden,
Right.

Council President Praisner,
1198.

Glenn Orlin,

Special circumstances warrant the Planning Board may adopt as a condition of preliminary subdivision plan or site plan approval alternative standards for a specific road. And it says the same thing then for the Council, in the case of roads constructed or reconstructed in the project in the approved CIP. The latter again, you already have that authority, this just states it in parallel structure with the Planning Board.



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Councilmember Floreen,

And the hope is that this book, that everyone is going to hold hands around in developing, will address pretty much every circumstance that folks can identify so that these back and forth things and delay things and so forth hopefully will be pretty much avoidable. There's always going to be something.

Councilmember Knapp,

But to that point, okay, so the Planning Board makes, determines that there's a need for a special exception. As that works its way through, what if DPS determines that that's a point that they think a different deviation needs to occur? Who then, which then governs? The special exception that was made by the Planning Board or the deviation that Permitting Services said for whatever reason we think makes more sense.

Glenn Orlin,

Again, the general standard is what's set in the law and the general standard is what, let me give you an example. The Road Code, let's say the road design standards say -- says a particular street should have 11-foot wide lanes. The Planning Board, because it's like Ellsworth Drive in Silver Spring or something, it's in a really special area, it's a lot of pedestrian movement, it's a very unique circumstance, says you know here, I think we want 10-foot lanes or 9-foot lanes even, because it is a very local street. They could say that. And under the Bill, they could say that in this particular case, we adopt a different standard which does not exist in the law and obviously wouldn't do so without input first from DPS, DPWT and everybody else, but they could do that. If DPS were to say that well, okay that's fine, but at this particular spot, there's a, you know, literally there needs to be a little bit wider because some trucks are going to have to pull over or because there's a curb in the right of way or there's a tree or something like that to make some spot change, they could do that. So the idea was to get away from the Planning Board or the Council having to look at a very detailed design plan for a road and say at every little foot along the way, you know, is it exactly 11-foot lanes or not? And the idea is that no, if there's spot deviations, that would be the Executive Branch's final authority to make that change. But if the Executive Branch generally wanted to say, well if the standard's 9-foot lanes, no we want to be 11 1/2 feet, they can still do that, but they need to get permission effectively from the Council if it's a CIP project, from the Planning Board if it's a development approval.

Councilmember Knapp,

I appreciate that. I guess I would just add then I think -- recognizing these are standards and all of the details and implementation are going to be worked out.

Glenn Orlin,

Right.

Councilmember Knapp,



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1 At least the recognition that there's going to be, as changes occur, there's going to need
2 to be some measure of communication between the various departments and agencies
3 and to get some language in there that addresses that and that those details would be a
4 part of whatever regulation ultimately is developed so we at least have that identified.

5
6 Council President Praisner,

7 I think we're missing point that the Executive Branch has a problem with having
8 standards that then can be waived and I don't think it is, I appreciate Ellsworth, but I
9 don't think Ellsworth is any different than some other central business district road that
10 one might find somewhere else and say this is unique and what you're doing, seems to
11 me, is changing the standards.

12
13 Glenn Orlin,

14 Well, we talked about this, talked with the Planning Board Chairman and the Planning
15 Board about this very issue back in the winter. And they also expressed the point that
16 they don't think this is something that they would exercise very often at all. It would be
17 only, really only really, really special circumstances warrant.

18
19 Council President Praisner,

20 Well, I think special circumstances in the eye of the beholder.

21
22 Councilmember Floreen,

23 Yes.

24
25 Council President Praisner,

26 So, the question is, you know, what are examples of special circumstances identifying
27 the road in the central business district where you want pedestrians is not in my view
28 special enough, because you want pedestrians in the whole central business district.

29
30 Glenn Orlin,

31 In the case of Ellsworth was the center of that particular development, there's a lot of,
32 there's a lot of movement, you have the fountain there and you have all the specific
33 design elements was something that was considered to be very different. That would
34 never pass, that road would never pass.

35
36 Councilmember Floreen,

37 If I could interject. We're not, this is the challenge of this effort and that's why we're
38 trying not to do it. We're trying to let the group identify these standards in the book that
39 we're not going to pass on, but they are going to work out these details so this is going
40 to be a rare and isolated incidence. And it may be that they come back to us with some
41 additional language that adjusts this, having worked out the details of these kinds of
42 categories. Because the challenge is, we're resolving arguments that have been going
43 on for 25 years and we're not, but we're trying not to do it. We're trying to let them do it



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1 in the design standards. And right now, the Council is anticipating problems that we're
2 asking them to solve in this regulatory --.

3
4 Council President Praisner,

5 If I can add, excuse me. This doesn't do this. This doesn't speak to the standards you're
6 going to ask them to do. This is outside the standards. It says a special circumstance.
7 Separate from the standards. So it is not, this continues after the standards are set. It's
8 beyond that. More importantly, that's the question the Executive Branch is raising.

9
10 Unidentified

11 -- these decisions are made at the planning stage but the planning. It means they don't
12 have the facts. They don't have the details. And the liabilities for the errors is going to
13 get transferred to the Executive Branch.

14
15 Councilmember Floreen,

16 Okay, and that's why we're looking for those standards to be developed in the group
17 effort. We can take this out. That's fine. But then you won't have any solution or else
18 you have to pick sides, the Hatfield's and the McCoy's. We're trying to let the Hatfield's
19 and the McCoy's work this out through the design standard process separately and
20 allow some alternative rights in the, what we hope to be totally unique circumstances.

21
22 Unidentified

23 With all respect Ms. Floreen, I don't think this language adds any value, any value to the
24 process --.

25
26 Councilmember Floreen,

27 When you talk to Mr. Hanson, he would have the opposite view, and that's agree you
28 will continue to have that view until we get the specifics. We are arguing about an
29 academic, we're having an academic argument without your design standards that you
30 will have worked out that ought to be able to address these issues. And here you go,
31 this is pretty much what the community debate was I think in March.

32
33 Council President Praisner,

34 Nancy, it seems to me that if you want this to be part of the working it out, then you
35 should say if the special circumstances as defined by the two groups warrant and you
36 define what those special circumstances would be. Because otherwise it's outside of
37 and separate from the standard discussion. It's a separate situation.

38
39 Councilmember Floreen,

40 Well, it's just as the County Council is, we grant ourselves here some alternative
41 standards, opportunities depending upon a unique project and this is not worth having a
42 large argument about at this stage. But my point is simply that the hope is that these
43 design standards will eliminate these kinds of conversations and worrying about worse
44 case scenarios. They may come back to us and say, we've developed, you know, I don't



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1 know how many are in that book, they may do twice as many and they may add some
2 additional provisions for dispute resolution and they may come back do us and say, we
3 don't need that there, or we have adequately addressed it in these regulations. This is
4 just again a holding pattern solution for the rare situation where there is going to be a
5 conversation and heavens knows most Councilmembers here have been asked to
6 arbitrate one or other of these.

7
8 Glenn Orlin,
9 The key here is that--.

10
11 Councilmember Floreen,
12 We just don't want to do it anymore.

13
14 Glenn Orlin,
15 It has to be very clear who has the final, -- Mr. Knapp's corner because the very point of
16 who makes the final decision.

17
18 Council President Praisner,
19 I would disagree. It also is what is the special circumstance? Because the Planning
20 Board can determine anything is a special circumstance and then you get to the
21 situation that when the permit is pulled, DPS says, no, that's not a special circumstance
22 because you still don't have resolution through standards. You've created a special
23 circumstance that is outside of the standards that the two groups will try to, within the
24 year, resolve. You've created a special circumstance not to find what it would be, given
25 the Planning Board the authority to waive those, but yet you still have the department
26 granting the permits.

27
28 Mike Faden,
29 We would be compelled to follow the Planning Board. This, the purpose of the sentence
30 is to resolve the situation which will occur regardless of whether the law speaks
31 specifically to whether a site plan or subdivision plan can outweigh the regulations and
32 this takes one policy position which the Committee approved, which is to say in special
33 circumstances, and it will be the Planning Board who ultimately decides what those are,
34 that they can override and that's a major policy decision for you all to make.

35
36 Councilmember Floreen,
37 The other thing is, I just, this is related to preliminary plans or site plans.

38
39 Mike Faden,
40 Right.

41
42 Councilmember Floreen,
43 It's primarily devoted to internal site situations. So typically, the County is going to be
44 more engaged in the bigger picture issue and less so on some of these minute details.



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Glenn Orlin,

This was a two to one vote in the Committee Ms. Floreen and Ms. Ervin voted in favor, Mr. Leventhal did not.

Edgar Gonzalez,

If I may --.

Council President Praisner,

And Mr. Leventhal indicated --.

Edgar Gonzalez,

If I may, we have been making this point from the very beginning of this Bill. Is this a transfer of authority from the Executive Branch to the Planning Board and the Executive has been consistently opposed to this. We have made that message clearly. It's an issue of accountability. I mean Mr. Knapp raised the issue. Who is accountable? Where do we go? What is the trail? The design standards should be, we should be accountable, the Executive Branch should be accountable for the standards. The Executive Branch should be accountable for the decisions that are made in the public right of away. The special circumstances here that are described for a preliminary subdivision or site plan, when we deviate from the standards today, we're in the detail engineering stage. We know the accuracy of 1/1,000 of an inch where things are. In the preliminary plan, you're not there. There's no detail. So, the issue that was raised by Ms. Praisner also could present itself. There is a special circumstance, the board says okay, let's do it this way. And when we go to the detailed engineering, DPS not DPWT, but DPS will say, hey wait a second. That will create a problem, now that we have all this detail, and then you are going to say, well who is responsible? Who calls the shot here? We're saying the Executive Branch should call the shot.

Councilmember Floreen,

These are the arguments that have existed through time on the Road Code and development issues. I just have to comment, it's why, and these issues have been resolved historically, often times by the Planning Board telling an applicant or DPWT, well, you are going to need to bend the rules here because of the unique circumstances of this environment. And frankly, the world has not come to an end. But ideally, those arguments won't happen in the future. Because as I said, you're going to work it out. The question is, what's the relief valve? And if the Council chooses a different solution, fine. But that's, the relief valve has historically, was hoped to be the people who are working with the community and working with the environmental features and all the characteristics that sometimes warrant a little more flexibility. But again as I said, this should be an extreme, not the principle basis for conversation.

Larry Cole,



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1 If I might, we have worked it out in the past a lot of times but it's not necessarily been to
2 the letter of the law. In the same way as Edgar was describing the process of amending
3 the standards and said, well it hasn't been done, I mean, we have approved plans that
4 haven't exactly met the letter of law. A good example of the special circumstances with
5 historic properties, if a property comes in for subdivision, they might be required to
6 dedicate an extra 20 feet and the porch might be in that 20 feet and what we've done in
7 the past is we've had them dedicate a certain amount and then say put in reservation
8 for future dedication in the rest of it so we've met the intent of the law, but we haven't
9 actually met the letter of the law. And by putting this waiver in, it would allow the
10 Planning Board to meet the letter of the law also and get the same result.

11
12 Council President Praisner,
13 Councilmember Berliner.

14
15 Councilmember Berliner,
16 I understand you've been circumventing the law previously, is that what you're saying?
17 Councilmember Berline,
18 That's okay, we don't have to go there.

19 Councilmember Berliner,
20 Let me raise with you a related set of issues that my community again has brought to
21 my attention and Chair of the Committee and I'm sure you heard this many times. One
22 of the questions that I was often asked after our first six months is, what has been one
23 of the things that has surprised you the most about being on the County Council?
24 (laughter). And I will say that one of those things is the passion over sidewalks, and the
25 width of roads and gutters in my community. And I thought speed bumps were a big
26 deal. Nothing compared to whether or not there should be a sidewalk or whether we'll
27 have gutters. In our community that doesn't have sidewalks. And there are many people
28 who don't want sidewalks. And there are many people who like their roads narrow and
29 don't want them changed if you have to come in and resurface the roads. So the fear
30 that this Bill has engendered in part is by adopting, if you will, default standards that
31 require quote, special circumstances to modify them, or in the case of the Council, I
32 believe that we can do so whenever there is a CIP proposal, is that we've created a
33 situation where they feel that they are already working uphill, if you will. That they carry
34 the burden of proof of demonstrating that the community or the neighborhood that they
35 have enjoyed and want to continue as is but for, they would like the potholes taken out,
36 thank you very much. They would like the road resurfaced. They'd like things to work,
37 but not fundamentally change. Now there are other communities that say, no, I want
38 sidewalks, I want curbs, et cetera. But there are some in my district who will go to the
39 mat on this issue. So, I pose this to you and ask for your guidance as to how you can
40 assure those aspects, of at least of my community, that their objectives with respect to
41 the character of their neighborhood will not be fundamentally altered or threatened by
42 this legislation.

43
44 Glenn Orlin,



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1 Let me just, let me answer that directly and you had mentioned the Civic Association
2 what's written in because you've gotten these letters Glen Echo Heights is a
3 neighborhood in Bethesda which has narrow streets. There's been debate there as to
4 whether or not there should be, to deal with storm drain issues, whether or not there
5 should be curb and gutter or not and other improvements. Majority of the folks there, at
6 least maybe, an overwhelming majority don't want that kind of thing. But they do want to
7 have the storm, the storm water issue dealt with. The way the Bill is drafted, it would say
8 that at the end of this year long or so process, there would be a whole set of standards
9 for secondary residential streets. There could be six, seven, eight, different cross-
10 sections for a secondary residential street. If none of them address what happens with a
11 street in Glen Echo Heights, the Council when it approves the CIP project for whatever
12 storm drain improvements there are there, could say that special circumstances warrant
13 here. That's your relief valve. It's a good term, Ms. Floreen, I wish I'd thought of it. It
14 gives the Council an out to recognize a truly unique circumstance where the
15 neighborhood seems to work. You don't need to have the wider road. And so leave it
16 the way it is. Without it, it would say that well you have to have a road which is at least
17 say 20 feet wide or 18 feet wide or whatever the standards end up being. Which may
18 work, it may not. But we can't, none of us are smart enough to look out in the future and
19 know exactly what that will be. So we do need a relief valve in the law for both CIP
20 projects as well as for development approvals. And the second issue is the issue that --
21 was raising, that's been talked about in Committee is, well, in the case development
22 approvals, who should have that final say? Should it be the Executive which has been
23 the case up to now, or should it be the Planning Board which was two to one in the
24 Committee and staff also recommend.

25
26 Councilmember Floreen,
27 Some of us had that experience a year or two ago with respect to Sonoma Road
28 community issue where we pretty much had to arbitrate the community based on
29 exactly these points. And that's the challenge of all this. There's, as much as we'd like to
30 think there's a one size fits all solution to every community, we all know every
31 community is different. So we are trying to get close. But there's always, there is going
32 to be a debate and, but we'd like to give as much guidance to the direction of that as we
33 can. But understand, you know, there's always a quirky factor that adds to community
34 character and commitment and, you know, there's just not always a straightforward
35 answer. So that's why we designated a favorite player in that debate.

36
37 Executive Branch staff.

38 Ms. Floreen, we are going to come back to this body a year from now or maybe sooner,
39 because we have to give you updates, I mean, what is there, we don't understand why
40 this language is here now. If a year from now, you have the County Executive's word, if
41 we are going to work collaboratively on this, all the members or stakeholders to come
42 up with a new process and new standards. So, why are we adding this language here
43 which is going to stay in the law? I mean, that's a year from now. When we come back



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1 to you, if you are not satisfied with the product, you have the power to put this in here
2 again.

3
4 Glenn Orlin,

5 The issue isn't that. The issue, I mean we expect that it will eventually come back as
6 something that the Council will want to approve. The question is, even after all that work
7 is done, there's going to be the odd ball situation. And the question is, who gets, if it's
8 the case of the subdivision approval, who should have the authority to make the
9 decision on that unique special warrant circumstances situation? Should it be the
10 Executive? Should it be the Planning Board? It has to be one or the other.

11
12 Councilmember Floreen,
13 Yep.

14
15 Glenn Orlin,
16 Otherwise we have confusion.

17
18 Mike Faden,
19 This has been known throughout the years as the lead agency issue in this particular
20 context and the Bill does propose a lead agency.

21
22 Executive Branch staff,
23 I'm not an authority, I thought the lead agency, I think legally the Executive Branch
24 maintains and owns the right of way as the lead agency. I thought we were just talking
25 about the process. Because again, I'm not a lawyer, but as far as the lead agency --.

26
27 Councilmember Berliner,
28 If I could, I guess I appreciate your concern with respect to this issue. I think your
29 concern has been dully noted with respect to it. Quite frankly, it wasn't my concern and
30 it wasn't to my question. So for purposes of my time and this conversation, I would be
31 grateful if we could focus on my question, which for purposes of this presuppose is that
32 the Executive Branch does have authority with respect to my community, that we're not
33 talking about subdivisions in Bethesda and site plans in Bethesda. We are talking about
34 your area that you will have quote final authority and the concern with respect to this
35 legislation that has been articulated to me is that it presumes if you will the one size fits
36 all. And the question that I have, have we put into this legislation sufficient flexibility for
37 the Department of Public Works itself or whoever the quote lead agency is in that
38 context to take into account the character of the neighborhood with that in fact is being
39 addressed or is it ultimately always going to be the default be the Council, which is how
40 I read it in the moment that it can come to us and then we can argue quote special
41 circumstances? I actually get a little nervous about that phrase, special circumstances
42 because I think it puts an undue burden and in my legal experience it is fairly narrowly
43 construed as opposed to a broader statement of that the roadway should be consistent
44 with the existing communities, you know, desires and that somehow the character of the



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1 neighborhood is taken into account in this process. So share with me how in a world of
2 default modes that the character of a neighborhood is taken into account in the
3 decisions that are made.

4
5 Edgar Gonzalez,

6 Let me address that issue. We believe that the Bill as proposed today is a lot more
7 responsive to your specific point than the Bill that was originally introduced. Because as
8 originally introduced, the standards were very rigid.

9
10 Councilmember Berliner,
11 Right.

12
13 Edgar Gonzalez,

14 And they were going to read it right in the law.

15
16 Councilmember Berliner,

17 And with all due respect, that's an abstraction to my community. I appreciate that it is
18 moved in a certain direction. (multiple speakers).

19
20 Edgar Gonzalez,

21 So what we will be doing in the developmental standards as we have today in the
22 current standards, if the book that was here today, you will see, if you go to primary
23 standards or secondary standards, you will see that there are two or three or four
24 different standards that can be applied to that specific circumstance. In addition,
25 because it is all being implemented in the Executive Branch, we waive the standards in
26 many instances. We are having to go to the Planning Board, we are having to come to
27 the Council to specifically adhere to the context in which we are designing. And that's
28 what we say is context sensitive design. Context sensitive design is not saying here it is,
29 it has to be 10 feet and that's it. Now --.

30
31 Councilmember Berliner,

32 Is that phrase in this language?

33
34 Edgar Gonzalez,

35 We have--.

36
37 Councilmember Berliner,

38 Context sensitive design?

39
40 Edgar Gonzalez,

41 Context sensitive design I believe that we --.

42
43 Councilmember Berliner,

44 I like that language.



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1
2 Edgar Gonzalez,
3 Yeah. (multiple speakers).

4
5 Councilmember Floreen,
6 But it's not in the --.

7
8 Councilmember Berliner,
9 Is there, I mean, is there a reason not to have language?

10
11 Councilmember Floreen,
12 You know again, this is a design standard that has been able to be developed yet.

13
14 Councilmember Berliner,
15 But can we direct that the design standard include context sensitive design? I think --. I
16 like the language. It sounds good and I'm looking where in the legislation so that when
17 constituents call up and say, you passed what and if you're telling me you better --.

18
19 Mike Faden,
20 Yeah. Go to circle 26, there's a long paragraph put in by the Committee which is the
21 purpose clause.

22
23 Councilmember Berliner,
24 Okay.

25
26 Mike Faden,
27 I don't believe it uses, reading it over now, it does not use the term context sensitive
28 design. That's the spirit behind it, we can certainly work up some amendments to this to
29 cover the kind of community character point you've made and throw in more clearly
30 phrases like context sensitive design.

31
32 Councilmember Floreen,
33 Yep. Let me just say, Ms. Ervin in particular was a key leader in this purpose clause
34 language so.

35
36 Councilmember Ervin,
37 We went back to this purpose clause, I don't know, five months ago, it was a long time
38 ago and the context sensitive design was not written in, I think it should be also and,
39 you know, I appreciate you picking up on that and running with it because the reason I
40 became a co-sponsor of this Bill was the conversation that we're having right now at the
41 table and so I appreciate your comments. The, and I want to go back to the
42 conversation that was taking place a little while ago, I had to leave for a second. You
43 know, had we five or six months ago gone in the direction that this conversation is going
44 in, in terms of DPWT and Park and Planning not being able to agree on anything and



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1 the fact that I'm not a planner nor am I an engineer, the reason that this Bill was set up
2 the way that it's set up to have a year long conversation between departments including
3 DPS and all the community partners, it was because we felt like between all of these
4 groups of individuals and organizations et cetera that we could get ourselves to the
5 place I think Mr. Berliner is talking about. And so I just wanted to thank you for bringing
6 it up again and hopefully we can, you know, we can move forward. But the context
7 sensitive design here is really what this Bill, in my opinion as we move into the future, is
8 going to be all about and so I appreciate your comment.

9
10 Council President Praisner,
11 Councilmember Berliner back to you, you have the floor.

12
13 Councilmember Berliner,
14 Thank you. I appreciate my colleague's support for inclusion of that explicit language
15 and I think it will be helpful to ensure the community that their community will be in fact
16 taken into account when these roads are done and I would point to the language with
17 respect to the resurfacing. I believe it's on page, or highlighted on page 4, the second
18 bullet, that restripe existing roads, the County could use the tighter standards as the
19 basis to restripe existing roads and create narrow lanes and bike lanes consistent with
20 the spirit of the Bill, the Bill does not mandate this. It is issues like that that make people
21 very concerned. Would you care to speak to that at all?

22
23 Glenn Orlin,
24 Well, the idea, this actually was raised by the Coalition of Smart Growth. They, originally
25 it said that, well, if you have a road like Randolph Road which doesn't have bike lanes
26 on it, and if it calls for bike lanes, then if you are going to go, if the standards call for say
27 11-foot lanes rather than 12-foot lanes, when you are resurfacing the road you have to
28 take out the, since you are replacing the top level anyway, when you restripe it why
29 don't you just restripe it with the narrower lanes and provide room for the bike lane on
30 the outside. It's cheap, it's easy, it's, you can do it very quickly. The Committee's stance
31 was, they generally like the idea, but they didn't want to mandate that. They basically
32 said that the language was – we have specific language there.

33
34 Mike Faden,
35 Yes we do.

36
37 Councilmember Floreen,
38 Circle 28.

39
40 Mike Faden,
41 Yep. I'm sorry, 51 is -- .

42
43 Councilmember Floreen,
44 51.



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1
2 Mike Faden,
3 The restriping, 28 is the reconstruction.

4
5 Glenn Orlin,
6 The bottom of 51.

7
8 Councilmember Berliner,
9 Reconstructing, resurfacing, what is the difference between quote restriping and
10 resurfacing and reconstruction?

11
12 Glenn Orlin,
13 Resurfacing is just replacing the overlay, the pavement. Not moving the curb, not
14 moving the edge of pavement if it is a shoulder road. It's just replacing the pavement
15 because it's worn out. Reconstruction, restriping is just putting the stripes back on after
16 you've taken the top level off and you've put the surface down. The lines, restriping is
17 the lines. Reconstruction, we had a long discussion about that as to whether or not to
18 have a definition in the law. We do have a definition now, which is on page 28.

19
20 Mike Faden,
21 Bottom of 28.

22
23 Glenn Orlin,
24 Circle 28. Which says, include any change in the width of the road, that is the width of
25 the pavement or the area between the curbs, but does not include resurfacing a road
26 without any change in its width. So we can resurface every road every several years
27 and this would not kick in the requirements of the road construction code. But if you
28 were changing the width of the pavement for whatever reason, then you would.

29
30 Councilmember Berliner,
31 One final question with respect -- . (multiple speakers).

32
33 Council President Praisner,
34 Come to you right next, let him finish and then I'll come right to you.

35
36 Councilmember Berliner,
37 One final question with respect to process and talking about the regulations and
38 developments of the regulations. Is this an up or down vote with respect to the Council?
39 Does the Council amend the regulations? What is the play here? And --.

40
41 Mike Faden,
42 In theory, the Council cannot amend regulations. You have to vote up or down in
43 practice, there's always a dialogue between the regulation issuing branch and the
44 Council, if the Council or even the Committee is not willing to accept them as such, a



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1 normal circumstances of dialogue ensues, changes can be made, the proposer of the
2 regulation, in this case, the Executive can send over amendments at any time while the
3 regulation is before the Council. So the ultimate vote is up or down, but that doesn't
4 mean there are no modifications.

5
6 Council President Praisner,
7 But there have been occasions where there is a standoff between the two.

8
9 Mike Faden,
10 There have been rare such occasions.

11
12 Councilmember Berliner,
13 And given the conversations to date and the difficulty of these sets of issues, it doesn't
14 seem to be a stretch to me that we could end up being past the 12 month timeframe in
15 which it was envisioned by, that these regulations will come to us. And in that event as I
16 appreciate it, these will kick in as default --. (multiple speakers).

17
18 Glenn Orlin
19 By resolution to extend the deadline.

20
21 Councilmember Berliner,
22 So our choice at that point in time is to extend it, which is to extend the status quo if we
23 so desire.

24
25 Mike Faden,
26 Or let the default provisions kick in.

27
28 Councilmember Berliner,
29 So we would have the choice assuming for purposes of this conversation that the
30 Executive Branch struggles as all of us do with these sets of issues and that it goes past
31 12 months, we have the choice of either implementing these as default rules or
32 maintaining the status quo until such time as you guys come to us with.

33
34 Mike Faden,
35 That's true. And you will have had at least three progress reports during that period.
36 And I assume Committee worksessions to discuss that.

37
38 Councilmember Berliner,
39 Thank you.

40
41 Council President Praisner,
42 Okay. Councilmember Elrich.

43
44 Councilmember Elrich,



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1 I just want to, on Roger's last point, and that's the, how you make that determination for
2 a neighborhood on what's an existing condition in the special circumstances and what
3 isn't a special circumstance. If a neighborhood is between, you know, two segments that
4 have sidewalks and you have potential for a bike path and something else and
5 somebody says well our neighborhood is a beautiful tree lined neighborhood and we
6 don't want the sidewalks and the bike paths, we don't want people walking through
7 here. We're used to a certain level of quiet and, you know, seclusion, and if you do this,
8 you're going to change that. Is that a special circumstance?

9
10 Glenn Orlin,

11 It could be. You need some kind of relief valve because there are obviously different
12 policies going forward here. One policy where we are trying to promote biking and
13 walking. On the other hand, you want to as much as possible reflect the wishes and
14 desires of the individual neighborhood and while the standards would say on a primary
15 street and higher, for example, you have sidewalks on both sides of the street and on
16 secondary and tertiary you might have one just on one side or both sides depending
17 upon, you know, what the circumstance is there. You may decide well, in this particular
18 case, given the specific special circumstances, we couldn't think of a better term frankly,
19 if there's a better way of defining it, please use it, you can make that exception. But I
20 think you do need to have that relief valve.

21
22 Councilmember Elrich,

23 I guess I understand the need for relief valve, I just wish we had a better definition of
24 what a generally special circumstance is, rather than what could be, I mean, I can
25 imagine everybody's condition is a special circumstance. Everything everybody is used
26 to is potentially a special circumstance. And so how do we avoid in every case basically
27 deciding whether we are going to vote to leave something at some neighborhood's
28 request as it is right --.

29
30 Edgar Gonzalez,

31 I can tell you how we do it today, Mr. Elrich.

32
33 Councilmember Elrich,

34 You just paint it over.

35
36 Edgar Gonzalez,

37 No. No. No.

38
39 Council President Praisner,

40 No. Nope. There's a process.

41
42 Edgar Gonzalez,

43 No, there is a process in place and what we do is whenever we are going to be building
44 a sidewalk, there is a certain number of people that have to request the construction.



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1
2 Councilmember Elrich,
3 Right.

4
5 Edgar Gonzalez,

6 We do some preliminary design, in some cases very extensive designs, depends on the
7 circumstances, the context of it which we are dealing with, and then we hold a Public
8 Hearing. So that is the process in place. There is a Public Hearing. There is an
9 independent hearing examiner that is independent of the department who represents
10 the County Executive and then that hearing examiner provides a recommendation to the
11 Executive as to whether or not the project moves forward and then the Executive or his
12 designee or her designee in the future makes the decision as to, okay, proceed with the
13 project or not.

14
15 Councilmember Elrich,

16 And so how is that going to track into the future? Because then will every widening,
17 every addition of a bike path or a sidewalk trigger this process, or will it automatically be
18 presumed that it will built it to the new County standard unless there is an objection from
19 the neighborhood and will the objection of the neighborhood then just simply come
20 before the Council or the objection of the neighborhood come before some hearing
21 body that renders some other equally impartial decision as we would render. So, I
22 mean, I'm trying to picture how this is going to work because if this is the smooth
23 redoing of the County into some, you know, this ideal Road Code, I want to know
24 whether in fact it's going to be a smooth path to redoing the County or if in fact we are
25 going to deal with these discussions or battles, depending on your perspective,
26 neighborhood by neighborhood. That's my first concern.

27
28 Councilmember Floreen,

29 Well, the intention here is that we will have standards that will guide really DPWT's
30 determination. Most of, this is mostly with respect to DPWT. It is preliminary plans and
31 subdivisions where Park and Planning ordinarily gets engaged. But most of this stuff,
32 the neighborhood reconstruction stuff is, will help them work through the standards and
33 they will still have discretion to work through the details just like --.

34
35 Glenn Orlin,

36 In any project that the DPWT does is one that the Council has to --.

37
38 Councilmember Floreen,

39 Periodically, there's a community debate and this will help them work that through. But
40 they have been very responsive to a variety of communities in solving exactly these
41 kinds of problems.

42
43 Councilmember Elrich,



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1 I just want to be clear about the process. Because if there are roads and things that
2 don't meet the current standard, of which there are many, and we then go back, we
3 enter reconstruction and we reconstruct to the new standard, is there going to be
4 notification of the neighborhood, diagrams of what the new standards are going to be
5 and the opportunity for the neighborhood to say yes or no, is this all going to be
6 formalized into a process?

7
8 Glenn Orlin,

9 Right. Every project that DPWT does, it is required by the current law, frankly this was a
10 piece that we staff had recommended come out of the law, because we thought it was,
11 a lot of the hearings frankly were, -- helped sidewalk program, typically the Committee
12 did not go there and we are not proposing it now. But basically every -- .

13
14 Council President Praisner,
15 You're not changing it.

16
17 Councilmember Floreen,
18 We're not changing it.

19
20 Glenn Orlin,
21 We are not changing it.

22
23 Council President Praisner,
24 You're not changing anything.

25
26 Glenn Orlin,
27 But the sorry, I lost my train of thought.

28
29 Councilmember Elrich,
30 There is a hearing.

31
32 Glenn Orlin,
33 There is a hearing, yeah. Every one of these projects, there is a hearing and the
34 designs are shown to the public and they comment on them and then DPWT then
35 reacts to that.

36
37 Councilmember Elrich,
38 Okay, I just wanted to make sure that we maintained that kind of process so it's not so
39 automatic.

40
41 Glenn Orlin,
42 Yes.

43
44 Councilmember Elrich,



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1 I'm okay with that. My next question is the context in between what's proposed and what
2 gets built and special circumstances and I understand when you get to the site, you can
3 measure down to the thousandth of an inch and make it so. But, I know one of the
4 concerns from the community is that the plans go before the Planning Board, we
5 assume they have been drafted by professionals and the design, and the design is often
6 an element of what's sold to the community and the Planning Board as to why a
7 project's a good project that should be built. And then people feel sometimes that what
8 gets built doesn't reflect what was in front of the Planning Board. And I would like to
9 think that the engineers and the people who designed and brought all this stuff with
10 fancy elevations in front of the Planning Board actually designed something that could
11 be built on the ground as opposed to just drew pictures. And then they go to DPWT and
12 they, and the same body, the same lawyers who argued in front of the Planning Board,
13 that this is what we are going to give the community and this is what it's going to look
14 like, then go to you and say, we have got special circumstances here, we can't build it
15 like that. That, I realize that Solomon or somebody should be able to resolve this. But
16 it's a question to me about how you, how this process is going to work itself out in
17 context or otherwise. It seems to me that at the point people submit plans that they are
18 asking the board to approve, they ought to know whether or not they can basically get
19 built and if the ultimate decision is whether the slope of a hill, you know, is, you know,
20 one inch over, you know, 10 feet or 1 inch over 12 feet, I don't really care. But if the
21 issue is that we actually can't provide what's in this picture because the topography and
22 everything doesn't allow it, then I do care. And I think a lot of other people are going to
23 care. So, I'm interested in the interplay between those two things.

24
25 Karen Kumm Morris,

26 If your question is dealing with a preliminary plan or a site plan approved by the
27 Planning Board, it does turn out that there is some thing that needs to be modified after
28 those approvals have already been made, there's a process for that. It's called an
29 amendment to the site plan where the issues of whatever it is that needs to be
30 addressed can be aired and another Public Hearing is held. And that's how you address
31 a problem that has happened after a site plan has been --.

32
33 Councilmember Elrich,

34 I know that's supposed to happen but I hear, I heard Edgar at least earlier talking about,
35 you know, having to make these decisions based on conditions that don't necessarily
36 conform to what was here in the plan.

37
38 Council President Praisner,

39 I think he was talking about infill existing development that needs a sidewalk or the
40 sidewalk request, not a new subdivision that will or will not have a sidewalk issue.

41
42 Edgar Gonzalez,



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1 And in the case of a new subdivision, DPWT is peripherally involved. DPS is the one
2 that makes those calls, the Department of Permitting Services. Because it would be
3 something built under permit.

4
5 Councilmember Elrich,
6 Okay.

7
8 Edgar Gonzalez,
9 So we provide advice.

10
11 Council President Praisner,
12 And the assumption is that the developer is building it with a sidewalk, which is what we
13 require now.

14
15 Edgar Gonzalez,
16 Depending on the classification of the road. On some tertiary streets we don't require
17 sidewalks under the law. And that isn't being changed here.

18
19 Councilmember Elrich,
20 Okay. My last question is, and I guess what Roger raised about the striping of roads
21 when the resurfacing is done. It seems to me, I mean, there are numerous objectives
22 here. One of them is kind of a, the transportation travel objective for everybody and
23 one's the storm water objective. You're not object, you're not resurfacing, it doesn't
24 really address storm water objectives nor does striping. But it seems to me that do you
25 really want to postpone the opportunity to do what you can achieve in terms of
26 transportation at the resurfacing stage only to wait until a road is reconstructed because
27 roads don't get reconstructed with a terrible frequency. And, you know, as you pointed
28 out, you may resurface a road every few years which means every few years you would
29 have the opportunity, over many years, you'd have the opportunity to make
30 improvements and try to achieve some of the things that have been laid out in the Road
31 Code related to transportation at least. If you wait to reconstruction, this, implementation
32 of all these transportation changes could take half a century.

33
34 Councilmember Floreen,
35 Yeah, it's true. And we did wrestle with that issue. The challenge is, it's not just, and
36 here we are siding with DPWT, the challenge is not just the lane widths, it's also all of
37 the other elements which are really not on the table. It's not, that's not the time when
38 you revisit all the grading issues or the environmental issues or the sidewalk issues.
39 Really just messing around with the asphalt and it seemed difficult to require it, but we
40 certainly weren't intending to preclude it as an option for the department.

41
42 Councilmember Elrich,
43 And I understand you can't do the sidewalks.



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1 Councilmember Floreen,
2 Yeah.

3
4 Councilmember Elrich,
5 But if you, if all of those matters is adding the bike lanes and doing some of the other
6 stuff that involves paint, it seems to me this is a good opportunity to do it and we ought
7 to try to take advantage of those opportunities to do it unless there's a downside that I
8 don't know of.

9
10 Mike Faden,
11 There's language in the Bill, the Committee discussed this, it's on circle 51, top of the
12 page at line 1276 which basically makes doing that sort of thing discretionary essentially
13 with DPWT when resurfacing happens.

14
15 Councilmember Floreen,
16 And, yeah, so we do, that's the language, where we – and didn't, but didn't require that
17 it be done.

18
19 Councilmember Elrich,
20 So I'm wondering why not require?

21
22 Edgar Gonzalez,
23 In some instances Mr. Elrich, if you try to provide the, let's say, 4-foot bike lanes, the
24 road gets so narrow that it becomes a source of accidents or sideswipes and all of that.
25 And so that's, it's a balancing act that we need to look at in specific circumstances
26 before we take an action so we have restriped a lot of roads and we have done what
27 you are trying to do, but it is not done just willy-nilly. We take into consideration, you
28 know, what the traffic volumes are, what the speed limits are, what the width of the
29 remaining pavement is going to be, where are the possibilities for sideswipes and things
30 like those. We take all of that into consideration in making the decision.

31
32 Councilmember Elrich,
33 But on the striping issue alone, at least as far as widths go, if the width is there, and it's
34 there at reconstruction, well the volume on the roads is not going to change in
35 reconstruction, the speed on the roads is not going to change in reconstruction, so I
36 understand considering whether the widths are adequate and I wouldn't ask you to do
37 this if the widths weren't adequate because I don't want to create accident potentials.
38 But, if you have got adequate width, everything else seems to me as the same before or
39 after reconstruction. So, can't you just do it in cases where you have adequate width?

40
41 Edgar Gonzalez,
42 Right. And we have been doing it. The latest example that I can think of is Shady Grove,
43 Shady Grove Road. We did the widening there. We had the narrowing lanes but we
44 created a bike lane. And there are other – in which we do these.



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Council President Praisner,

I do think we need to move on if we are going to cover everything by 4:30. So, let's, at least one swipe at it. Councilmember Berliner, your light is on.

Councilmember Berliner,

One last swipe at it. Just so if I reframe it, which is how my mind works, I'd like you to tell me whether I'm reframing this conversation correctly. As I appreciate what we're doing here we are establishing default modes, default standards that would, will be adopted and those default standards now as a function of this conversation will include consideration of context sensitive design so that when you go through your process of determining whether or not to make certain changes to a roadway, you will look at the context in which you are making those decisions and community members will be able to argue before you one way or the other with respect to that context and your decisions will explicitly take into account that consideration in determining whether you do x, y, or z. Is that a fair characterization of how you envision this at this point?

Edgar Gonzalez,

That is correct. But Mr. Berliner, that's not significantly different from what we do today. We listen to the community and we make changes to our roads frequently on the basis of community input.

Councilmember Berliner,

I appreciate that and I know you appreciate that there are members of the community that have different views with respect to the, your listening capacity and, but that's true for all of us, but, so, thank you.

Council President Praisner,

Okay, let's move to the other issues in the packet, just to ensure that we have an overview of all of them.

Councilmember Floreen,

I think we're down to obstruction of right of way.

Council President Praisner,

Correct.

Councilmember Floreen,

Mr. --.

Mike Faden,

We are on, this is a part of the current law where the Committee essentially did two things.



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1 Councilmember Floreen,
2 A couple of things here, yeah.

3
4 Mike Faden,
5 Yeah, we first of all, clarified after we had discussions with the staff, while we were with
6 the County Attorney, tried to make it clear what obstructions are, for lack of a better
7 term, major, and that term is not used in the Bill, that require a franchise from the
8 County and what more, what less permanent obstructions only require a permit from
9 DPS. And the language that's repeated in a couple of places which shows up on page
10 11, circle 11 as part of a list, right at the top of the page there at lines 239, 240, DPS
11 can issue a permit to install a temporary, removable obstruction or occupation of a right
12 of way. And that, later on that same phrase is used to distinguish what they can do from
13 what requires a franchise in the County. That's the first point on obstructions. Second
14 point is that Mr. Berliner brought an amendment to the Committee to tighten up the
15 current law regarding sidewalk and curb lane closures especially in urban areas. And
16 his amendment shows up basically throughout circles 11 and 12 among other things it
17 specified a covered walkway which DPS has in the past not always been ready to
18 approve, can serve as an alternate walkway. It basically eliminated the test on lines
19 271, 272 that allowed the director to approve making pedestrians or bicyclists go to the
20 other side of the street, now the burden is on them to show that creating the walkway on
21 the same side of the street is not possible. And finally down on the bottom of circle 12
22 going up to the top of the next page, before the director of DPS can issue a permit to
23 close a sidewalk, curb lane or shared use path, the director must approve a temporary
24 traffic control plan submitted by the applicant's engineer which, if you go to the top of
25 the next page, provides, minimizes inconvenience, provides necessary – and includes
26 safe and reasonable pedestrian alternatives.

27
28 Council President Praisner,
29 Okay. I don't see any lights on that issue. Marc, your mic is still on. Okay. Alright, can
30 we move on to the next issue which is the franchises and the as-builts.

31
32 Mike Faden,
33 Right, on franchises, franchises, the franchise law's always been part of this chapter.
34 The law was cleaned up without an – major substantive change. The most important
35 change was to allow, right now the law limits franchises to two 25 year periods, initial 25
36 year period and a renewable period. Some of the franchises are currently, are things
37 like parking garages under the right of way which are not going to go away after 50
38 years and so this Bill reflects that reality and allows extended 25 year reapprovals,
39 renewals.

40
41 Council President Praisner,
42 Right.

43
44 Mike Faden,



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1 There is also a lot of legal jousting about language as to whether a State franchise
2 counts, what franchise is available, what is needed before. (multiple speakers). And
3 essentially the Committee or the – staff proposed and I believe the Committee agreed to
4 keep the language somewhat neutral. It shows up in a couple of places, most
5 importantly on the top of Circle 13 where it uses the term of valid franchise but then
6 deleted the words from the County or a franchise from the state, leading to those who
7 would like to someday litigate it what is a valid franchise, not tying the hands of our
8 County Attorney on the issue. Moving directly to as built drawings. This is a new
9 provision on circle 25 which requires franchisees or those, well, franchisees who are
10 either authorized by a County franchise or a permit to build in the right of way the
11 franchisee must after building is done submit a full set of as-built drawings to the
12 Committee out of language requested by one of the franchisees to say that the hard
13 copy would be a format maintained by the franchisee in the ordinary course of business
14 so they don't have to create a new type of drawing, and also added the last sentence to
15 bolster what we think is already in the state public information act that these drawings
16 would be confidential and not available to the competitors or the public.

17
18 Council President Praisner,

19 I have had two, several conversations and questions about this so I want to chime in on
20 this. My view is that we are not dealing with the comprehensive map of where
21 everybody is and where they happen to be. But we are dealing with construction. And
22 when a permit is pulled, someone is required to tell you in general terms where they're
23 going to work. They are also required by this legislation and by I think what we hoped
24 we had already required within some of the franchise agreements, required to either
25 offer either paper, but preferably in a technologically, the as-built so that we know
26 exactly where in the right of way folks have just dug and where they have laid whatever
27 they have constructed. I'm not looking for everything Verizon has in Montgomery County
28 or everything Washington Gas or Pepco has would that I could, because I think that is a
29 major issue. But I do think that if someone is digging in the year 2007 or beyond and
30 plans to do some work in our right of way, given security issues, construction, deviations
31 that have occurred, and that we've uncovered when situations occur, that Ms. utility and
32 its structure is not adequate. It doesn't give us the kind of information we need in a
33 timely way. It also has turned out not to be accurate in some cases. And so I think from
34 a security perspective and the public safety issues of rights of way that we have a
35 responsibility for someone who got the option to be in there to tell us just what exactly
36 they've done. Edgar, I know there are some horror stories that have occurred when you
37 don't, you think you know what's there, and it turns out it isn't there or it isn't where it's
38 supposed to be. Now folks have said, and I am somewhat sympathetic that when it
39 comes to the huge pipes that are Washington Gas or others that are relatively large, the
40 standard of deviation from a standpoint of what's built and what they preliminarily said is
41 probably relatively minor. It's more the wire and the conduit and the smaller pipes that
42 either aren't as deep as they were supposed to be or deeper than they're supposed to
43 be, and you get surprised, either way, and that's where the major problems have
44 occurred that have included telephone service being eliminated to all of Bethesda over



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1 a period of time or pipes breaking that have major problems for everybody. I am not
2 sympathetic at all to the issue that Verizon raises about homeland security and
3 terrorism because with all due respect, Verizon has been part of the problem with its
4 telephone lines, that we're not even asking for at this point unless they do work in the
5 right of way. We're not asking for everywhere that they are. We're asking for where they
6 will be and where they go, and it seems to me that in this day and age with limited right
7 of way with the deviation that I've seen and what the implications are when that
8 deviation occurs, both from a safety and from an access for someone else, that these
9 are reasonable requirements to suggest from a tenant, which these individuals are, in
10 the public's right of way. So I still have no problem. I'm most sympathetic to Washington
11 Gas from a standpoint of the volume of the item that they weigh. But, and if there's
12 some way to deal with that separately, I might be open to that. But I think everybody
13 else, and I'm worried about the exception kind of process legally righting an exception
14 for one. But I'm, having seen what folks have built that then you think it's a straight line,
15 and it turns out they've built like this, and therefore wiped out anybody else's ability to
16 do it at a straight line, I've seen the maps, presented them to the FCC and others. I think
17 this is a legitimate request. And I see no lights. So we move on.

18
19 Councilmember Floreen,
20 Abandonments.

21
22 Mike Faden,
23 Next issue is abandonments and closings. The major change this Bill makes in the law,
24 and it was in the Bill as introduced, not really changed by the Committee is to change
25 the abandonment process from what it has been for a long time which is essentially an
26 on-the-record process where the ex-parte rules apply to a more legislative style
27 process. There would still be an Executive Branch hearing and recommendation which
28 would come to the Council on any abandonment, but the Council could consider other
29 information in the normal course of its decision as they do on many other land use
30 proceedings. The Bill also on circle 106 makes clear what was previously a bit
31 ambiguous that the abandonment process doesn't apply to a temporary closure required
32 essentially by construction. If it doesn't last longer than 12 months or the Council, if
33 there's again special circumstances require that the temporary closure go longer than
34 12 months, DPWT can apply to the Council for approval. In other words, this is a mini-
35 closing proceeding that doesn't follow the normal rules which just could be a simple
36 resolution.

37
38 Council President Praisner,
39 On this issue, Councilmember Berliner.

40
41 Councilmember Berliner,
42 Having just gone through an abandonment conversation with my colleagues, I did not
43 find the process to be unduly limited, but I can understand why one at the very least
44 might want to have oral argument with respect to such matters. My question is whether



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1 or not you explored that as an alternative to, if you will, more full-blown lobbying that will
2 take place in the absence of some formal process.

3
4 Mike Faden,

5 The Bill deletes the oral argument provision. We don't, because in a way to reduce the
6 formality of the process, we don't construe that as saying the Council or in particular a
7 Committee cannot hear from people, cannot conduct an extended Public Hearing if you
8 want to.

9
10 Councilmember Berliner,

11 Well, insofar as all abandonments ultimately do come to us, am I correct?

12
13 Mike Faden,

14 Yes.

15
16 Councilmember Berliner,

17 And currently they come to us in the context of a hearing record and we have no contact
18 with, I was posing an as alternative to, if you will, allowing any and all contacts a far
19 more limited encounter which would be that the parties could request oral argument,
20 and the Council could agree to have oral argument with respect to an abandonment and
21 that would be the context in which the Council could be informed publicly in full view
22 with respect to the views of the individual.

23
24 Mike Faden,

25 Now I understand your question. The current law does allow for oral arguments, but
26 only on the limited record before the Council.

27
28 Councilmember Berliner,

29 Okay. And so I just want to say that it isn't clear to me that the current law doesn't work.

30
31 Mike Faden,

32 Our experience, we recommend this based on experience where the current law seems
33 to effectively shut off information and not allow Councilmembers to function like
34 Councilmembers.

35
36 Councilmember Berliner,

37 Okay. I guess I'm always surprised at parties that don't ask for oral argument on such
38 matters because that's how I get most of my --.

39
40 Council President Praisner,

41 Well, but absent this, eliminating the oral argument allows the T&E Committee to have a
42 conversation with the, on everything, not just on the record from the hearing examiner.

43
44 Mike Faden,



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1 Right.

2

3 Council President Praisner,

4 So it's broad--.

5

6 Councilmember Floreen,

7 It would be like water and sewer category changes where if there's a new issue that
8 comes out, the applicant can talk with us and clear the air.

9

10 Council President Praisner,

11 That opens it up.

12

13 Mike Faden,

14 Yep.

15

16 Council President Praisner,

17 Okay. Next item.

18

19 Mike Faden,

20 Temporary closings I did cover under abandonment.

21

22 Council President Praisner,

23 Right.

24

25 Mike Faden,

26 Pedestrian Safety Committee have simply taken the resolution and we need to make
27 one minor change and put it into the law. The Committee decided to keep it as a five-
28 year sunset, but because it is a Committee, under the, a legally constituted Committee
29 with Executive appointments, Council confirmation, it really belongs in the law. The only
30 change is that on circle 124 on line 3213 we would take out the words participant and/or
31 to make this more consistent with the resolution you just approved.

32

33 Councilmember Floreen,

34 In other words to make it into bicycle advocates.

35

36 Mike Faden,

37 Advocates, right.

38

39 Councilmember Floreen,

40 Okay.

41

42 Council President Praisner,

43 And reduce the number of public.

44



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1 Mike Faden,
2 It kept the number of public the same. I'm sorry.
3
4 Council President Praisner,
5 We need to keep an odd number.
6
7 Mike Faden,
8 Right. I'm sorry, the bicyclists is one of the public members.
9
10 Council President Praisner,
11 Right. Not, not, okay.
12
13 Mike Faden,
14 Okay. There's not adding one.
15
16 Council President Praisner,
17 Adding, okay, right, okay, that's what I meant, not changing the number by adding it, but
18 by -- .
19
20 Mike Faden,
21 Right.
22
23 Council President Praisner,
24
25 Okay.
26
27 Councilmember Floreen,
28 So, if we can just stop here for one moment, we're done.
29
30 Council President Praisner,
31 No, we have two issues.
32
33 Councilmember Floreen,
34 Well, let me just say this. We're going to add a, just to summarize where, I think we are,
35 there's some follow-up issues that we can get into in a minute. But we're going to add
36 language that define target speed in this. I think it would be useful in the purpose clause
37 to add language about context sensitive design.
38
39 Council President Praisner,
40 Yes. We agree about those two.
41
42 Councilmember Floreen,
43 Now, Ms. Praisner raised the question of this waiver.
44



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1 Council President Praisner,
2 Waiver.

3
4 Councilmember Floreen,
5 I would like to isolate that for, if you could take a look at that issue and its implications.

6
7 Mike Faden,
8 I can speak to that now if you would like.

9
10 Council President Praisner,
11 Well, you were going to. So, let's, you said it already is covered.

12
13 Mike Faden,
14 Basically I'm looking for the exact language which is on circle 33, 34. The question, this
15 is going back to the first issue we dealt with about the road classifications.

16
17 Council President Praisner,
18 Right.

19
20 Mike Faden,
21 One of the primary purposes of the Bill was to make clear who adopts those
22 classifications, who says which road is a primary residential or whatever. And the way
23 the Bill was drafted and the language right at the bottom of 33 going up to 34 says that
24 the roads are classified as designated in the applicable master or sector plan with two
25 exceptions which came in as a result of discussions with the department. The
26 subsections m and n which if you go back to where we were on the road typology on
27 circle 45, 46, m and n are --.

28
29 Unidentified
30 Secondary and tertiary.

31
32 Mike Faden,
33 Secondary and tertiaries which are determined not in the master plans, but basically in
34 each subdivision approval. The reason we would not recommend a waiver for authority
35 for DPWT in this is because this decision, we think, cannot be shared. What happens to
36 a particular road that is a secondary or tertiary or business district street or anything,
37 what the consequences are are spelled out in the regulations that will come from the
38 Executive. But to do, we think you need to have somebody who is -- .

39
40 Council President Praisner,
41 No, it's the waiver and the standards I was talking about.

42
43 Mike Faden,
44 Okay.



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1
2 Council President Praisner,
3 Not the waiver of the designation. It was the standard issue because they don't meet
4 those standards.

5
6 Mike Faden,
7 Well, then, the regulations that set up the standards should cover that if I'm
8 understanding this correctly.

9
10 Council President Praisner,
11 So --.

12
13 Mike Faden,
14 I don't think you need any more specific waiver language in the law. We'll look at this
15 more.

16
17 Councilmember Floreen,
18 Well, why don't you talk -- in the course of next week so --.

19
20 Council President Praisner,
21 Because of the definitions that are listed and the waiver issue if they don't meet those
22 definitions.

23
24 Mike Faden,
25 But it's the --.

26
27 Council President Praisner,
28 Who can waive that?

29
30 Mike Faden,
31 Well, it's essentially, it's the Planning Board call.

32
33 Council President Praisner,
34 Well, let's deal with it separately.

35
36 Mike Faden,
37 Okay.

38
39 Council President Praisner,
40 But there are two other issues.

41
42 Mike Faden,
43 Right.



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1 Council President Praisner,
2 One is the amended document that we received from you, the supplemental packet.

3
4 Mike Faden,
5 Yes.

6
7 Council President Praisner,
8 I want to have at least a comment on that so it's in the record.

9
10 Mike Faden,
11 Sure.

12
13 Council President Praisner,
14 It deals with the Civic Federation's request for an amendment.

15
16 Mike Faden,
17 Right.

18
19 Council President Praisner,
20 And the, I think, misunderstanding about the Planning Board's role and what the
21 Planning Board's action says as far as requiring construction of roads or laying in that
22 subdivision or site plan review or whatever, preliminary plan, a requirement for roads,
23 and you may want to speak to that.

24
25 Mike Faden,
26 Yes. Yes. We can speak to that. We sent out yesterday, we got yesterday an e-mail
27 from Jim Humphrey from the Civic Federation reiterating an amendment that they put in
28 their Public Hearing testimony which we had just missed for the Committee. It concerns
29 section 494 on circle 4 which is a section that was essentially unchanged from current
30 law. We just added a few particular types of construction that it would cover that
31 probably were implicitly there anyway. But Mr. Humphrey would say that, the section
32 has to do with title participation and cost of private developments which we agree may
33 not be the best title. It allows the Executive to join in participating with a private
34 developer in the cost of any street, sidewalk, bikeway, et cetera, et cetera. As our memo
35 said, this has been used a lot, there is a, in the CIP a project called subdivision roads
36 participation. What it's been used for is to fill gaps, to add to the roads, for example, the
37 developer has to build in order to make it complete, so the County joins in. Mr.
38 Humphrey is concerned about the County picking up costs that he believes developers
39 are supposed to pick up under the Planning Board's approvals. The basic legal
40 misconception there and this is an issue that is going to come back again in the context
41 of the Clarksburg development district so we're glad it came out now, the basic legal
42 misconception that he shares is that the Planning Board designates how something is
43 paid for. We believe the Planning Board designates what is to be built. In other words,
44 the, whatever the subdivision is cannot be finished or go forward until infrastructure



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1 items a, b and c are completed and to that extent, in that sense, the developer is
2 responsible. But the Planning Board doesn't say to the developer, you and you alone
3 have to pay for it. The Planning Board has, we believe, no legal authority to tell a
4 developer or to tell anybody who can pay for it, and in some of the, many of these cases
5 it is the developer who pays for it. But that is not within the Planning Board's authority
6 under the subdivision and zoning laws. So, because of that we believe that Mr.
7 Humphrey's proposed amendment doesn't belong here and we recommend against it.
8 We would recommend a change in the title to just say public private participation.

9
10 Council President Praisner,

11 Okay. Absent any objection to the change in title, we would incorporate that.

12 Councilmember Elrich.

13
14 Councilmember Elrich,

15 I don't mind changing the title. I read your memo and I read in the quote that you cite
16 from the Planning Board Chair's letter.

17
18 Mike Faden,

19 Right.

20
21 Councilmember Elrich,

22 And I guess the word that raises concern in my mind is where the Planning Board Chair
23 says generally because generally does not mean, to me does not mean never.

24
25 Mike Faden,

26 Excuse me.

27
28 Councilmember Elrich,

29 So it seems to me it leaves the door open as to whether or not they may, in fact, say
30 that this is conditioned on your doing this and our expectation and that you've given us
31 assurances that it will be done because you're going to pay for it to get it done. And I
32 don't see any harm in putting in the language suggested by the Civic Fed because if the
33 Planning Board doesn't designate it clearly to the developer, then it's never going to
34 come up. But if they do designate it to the developer, I certainly want to make sure that
35 the County doesn't assume something that has been assigned to the developer and I
36 see no harm in including it.

37
38 Mike Faden,

39 In Mr. Hanson's letter, we didn't show you the whole letter, he goes on to, the only
40 exception he cites to the general rule is when the Planning Board has found violations,
41 and as a part of a violation proceeding, and this is, Clarksburg Town Center is the
42 example here, has told the developers in order to cure the violations, they have to do x,
43 y and z. And I believe that is probably the only exception, at least we can think of, under
44 the law. We don't think the Planning Board has authority. They have authority to require



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1 things, but they don't have authority to specify who pays for them. So that's the
2 fundamental question here.

3
4 Councilmember Elrich,

5 I guess I read through the lengthy legal briefs around Clarksburg and it's, I'm not
6 convinced that in fact, they can't do that or that they may not have done that or operated
7 on the assumption that it was going to be done as a condition of their getting approval.
8 So I'm not completely convinced. And again, I see no harm in including it.

9
10 Council President Praisner,

11 At this point, it's not there. Are there other items that you, we have gotten to 4:30. I told
12 the Council we would end at 4:30. (multiple voices). I know. We need to make reference
13 to the subdivision item which we will also be acting on next week. But I want to make
14 sure before we leave the legislation, as I understand it, the Executive Branch continues
15 to have significant concerns with the language on circle 46 I think is where it is. And I
16 believe that Councilmember Leventhal shares their concern at this point in time. There
17 may be others who will and it appears to me that that issue will come up again next
18 week. And the Executive Branch, obviously, has an opportunity over this week to, if they
19 have alternative language absent removal of special circumstance or however they may
20 want to phrase this, they have the option of presenting that case and also alternative
21 language for Council consideration. Is there anything else as far as legislation is
22 concerned? Nancy.

23
24 Councilmember Floreen,

25 Let me just say that while there are a variety of follow-up items here, we've been over
26 most of them. There's a technical provision with respect to the definition of urban areas
27 that we're going to have to get into at a later point, and we'll get help from the Planning
28 Board on that. And we did have a request from the Civic Fed to evaluate the speed
29 hump program. They wanted us to make the changes in this. We said let's put that to
30 one side and take that up later. And also, we've had a tremendous community
31 engagement on the question of orphan roads. We will continue to have that in terms of
32 separate work. So I just wanted to note that's a continuing work in progress and with
33 some significant community interest. But other than that, those are, I'll just say that this
34 issue of Planning Board versus Executive is the one we spent the most time on in
35 Committee, and I think it's only fair that the full Council continue to take that.

36
37 Council President Praisner,
38 Councilmember Berliner.

39
40 Councilmember Berliner,

41 I just wanted to thank the Council President and the Chair of the Committee, as
42 someone not on the Committee and dealing with this complex Bill, this two and a half
43 hours is very helpful to me to have a better understanding of what this Bill does and
44 doesn't do. And so I do think, as painful as it is to go through this again and again from



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1 the Chair's Committee and the Committee's perspective, perhaps, it was very helpful to
2 me. And so I appreciate the time spent.

3
4 Councilmember Floreen,

5 I just want to say I do appreciate everyone's attention to this. I really think that the way
6 our communities look and feel makes such a difference in community support for road
7 improvements, in terms of community character, and I think this is a really important
8 piece of work, and I'm very glad that everyone has contributed so substantively to all of
9 this. If we did not have a few arguments continuing, this would not be the Road Code.

10
11 Council President Praisner,

12 Well, it can't be as massive an undertaking as this has been without differences of
13 opinion. Two things I want, three things I want to say and I know Edgar wanted to make
14 a comment. I still think it would be helpful in this coming week to lay out more in some
15 kind of document, the overview of changes or whether things stayed the same. Council
16 Vice-President Knapp, before he left, reiterated that it might be helpful to have this
17 overview before we get into the weeds in a broader sense. Secondly, I am concerned,
18 continue to be concerned in the snow shoveling law which is incorporated here that we
19 require 24 hours for folks when our sidewalks are against the road, and our snow plows
20 put the snow there, and then we tell the community they have less than 24 hours to
21 have removed the snow that our snow plows put there. But I'm not sure that the way
22 we've discussed the Road Code and its incorporation is the appropriate time to look at
23 this issue. I just want to put that point out. Secondly, I'm assuming that the traffic
24 calming and all those pieces are incorporated as they exist now into this legislation, and
25 although the Committee will be reviewing those things at some point, nothing has
26 changed from what we have here.

27
28 Glenn Orlin,

29 Two things I'll just say about that. First of all, we're just saying we're a bit uncomfortable
30 that nothing about the traffic speed hump program was in the law, and so we put the
31 very basic elements of the speed hump program in the law. But all of the other
32 requirements that DPWT has in its policy will still be there. The only change we made,
33 really, is perspective which has to do with the minor arterial saying that if you do create
34 a minor arterial classification, that it would allow speed humps at a certain spacing. But
35 again, you don't have any minor arterials existing yet. But other than that, it's
36 unchanged.

37
38 Council President Praisner,

39 Okay. Finally, I'm a little troubled, and I'm trying to find line 649, the minimum quantity of
40 storm water being managed in road construction, and I wonder why we aren't saying
41 maximum quantity of water, storm water should be managed in the construction. There
42 are standards that are, I mean, there are designs now with the curb extensions, et
43 cetera, that are more than obviously we're doing now from a standpoint of managing the



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1 storm water from that road. And I don't know what a specified minimum quantity of
2 storm water is.

3
4 Mike Faden,
5 Regulations.

6
7 Councilmember Floreen,
8 And it's identified to a certain degree on the very last page.

9
10 Council President Praisner,
11 Right. But I'm saying I'm wondering -- . (multiple speakers). --some maximum.

12
13 Councilmember Floreen,
14 Well, I mean, at least, it's at least as opposed to no more than.

15
16 Council President Praisner,
17 As much as you can. Not a little, a minimum amount.

18
19 Mike Faden,
20 You want to have a floor.

21
22 Council President Praisner,
23 Well, I'm worried about the floor being the standard rather than you're pushing the
24 envelope. That was my only point. It seemed to me that putting a specified minimum in
25 the standards is going to lead to that being the maximum that anybody does.

26
27 Mike Faden,
28 Which is still more than now.

29
30 Council President Praisner,
31 Well, but this is supposed to be design that is conducive to our thinking creatively, so
32 why should we settle for minimum.

33
34 Mike Faden,
35 So you would like, I think you'd like both minimum and target standards.

36
37 Council President Praisner,
38 Yeah, maybe. Something like that.

39
40 Councilmember Floreen,
41 Well, that, that might be.

42
43 Council President Praisner,
44 I don't want maximum but --.



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1
2 Councilmember Floreen,
3 Conversation for the design elements as they get worked through in Committee.
4

5 Council President Praisner,
6 Well, then maybe we should say a specified standard and not say minimum or
7 something. I don't know. Let me think about that over the week and talk to colleagues.
8 But I'm trying to get us to push this. I think our roads and construction should explore
9 every option for absorbing all of the storm water.
10

11 Mike Faden,
12 There is the default standard on circle 130.
13

14 Council President Praisner,
15 Yeah, I know. Okay. Well, let me look at that issue. That's the only issue. Now let's deal
16 with the subdivision reg issue. Do you want to make any comments? It's pretty
17 standard.
18

19 Mike Faden,
20 Except for a couple, it's mostly conforming changes. Glenn can point out there are, I
21 think, two or three substantive items in it.
22

23 Glenn Orlin,
24 One substantive change is that the, currently the law says that a permanent road end, in
25 other words if you have a cul-de-sac, I'm sorry, if you have a road end, it has to be a
26 cul-de-sac and this would change it so that it could either be a cul-de-sac, or what's
27 called a, we're calling it a turn around – known as hammerheads. It's a t-ending which
28 takes up a lot less space.
29

30 Councilmember Floreen,
31 Less space.
32

33 Glenn Orlin,
34 You can't do that in every case because we have several homes around the end, it's
35 just not big enough to be able to handle the traffic. But for very minor road ends, it
36 should be acceptable. So that's a change. Another change is currently the subdivision
37 regs require a 600-foot block spacing for every type of road in all parts of the County,
38 I'm sorry, for arterials and for major highways. The Planning Board recommended and
39 we also recommend that that block length be for within urban areas, what the law
40 defines as urban areas would no longer apply. So you could have shorter block lengths
41 than 600 feet. It still would apply in suburban and rural areas. Other than that, most of
42 the changes are either very technical or definitional changes. There's a definition of
43 crosswalk in the subdivision ordinance which most of us think of, you already have a
44 crosswalk, is not what the subdivision reg says is a crosswalk. What the subdivision reg



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1 refers to as a crosswalk is a mid-block pedestrian crossing and so we're hoping to
2 change the name here to mid-block pedestrian path or pedestrian way from crosswalk.
3 We're defining an engineer as a professional engineer registered in Maryland because
4 it's unclear, and you've read a little bit about this lately in some places where an
5 engineer is not really an engineer. So we're making that very clear here.

6
7 Mike Faden,

8 The, the most important, the record plats don't have to be on linen anymore.

9
10 Glenn Orlin,

11 That's right.

12
13 Council President Praisner,

14 I like that. Can you draft some language for me that says in naming streets the board
15 should wherever possible continue existing street names where the road extends?

16
17 Mike Faden,

18 Sure. There is a street -- .

19
20 Council President Praisner,

21 I'm tired of having one street on one side, one name on one side of the street and
22 another name on the other. It's ridiculous.

23
24 Mike Faden,

25 There is a street name -- .

26
27 Council President Praisner,

28 I know. I know it's the board because I've tried to get them to name a, change the name
29 of a street so I know it's the Planning Board. But I also think there's too much latitude for
30 these new fancy names, and the road is just a crossroads and should continue the
31 existing names. (multiple speakers). No, no, no, no. Broad Birch on one side and Clover
32 Patch on the other. And folks don't know what the heck is going on and it leads to more
33 signs saying Clover Patch over here, Broad Birch over there and you wouldn't need
34 that. We would have sign reduction. It's my effort to reduce the quantity. Okay. Anything
35 else? If not, we'll be back at 7:30 for our Public Hearing. Oh, I'm sorry, Edgar, yes. I
36 apologize.

37
38 Edgar Gonzalez,

39 Not a problem. First of all, I want to thank the Committee and the Committee Chair for
40 their patience. We went through 10 different versions of this.

41
42 Council President Praisner,

43 You can tell us that next week. Just tell us what you need to tell us.



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1 Edgar Gonzalez,
2 Make it quick. The process for suggestions for minor changes to language, how do we
3 go about that? Do we send them to --.
4
5 Council President Praisner,
6 Get them to Mike and Glenn ASAP.
7
8 Glenn Orlin,
9 We have had changes to minor language. (multiple speakers).
10
11 Council President Praisner,
12 Some other things, they're talking about other things, right?
13
14 Edgar Gonzalez,
15 Okay. Well, there was a definition, for example, that came up on Friday, so we have
16 suggested --.
17
18 Council President Praisner,
19 Anything that is not in the packet that you want the Council to have for its consideration
20 next Tuesday, obviously the packet standards apply, but the sooner you can get it to
21 Mike and to Glenn the better.
22
23 Glenn Orlin,
24 Right.
25
26 Council President Praisner,
27 The packets need to be prepared for Friday. So -- .
28
29 Glenn Orlin,
30 You have got to comply with the packet code.
31
32 Edgar Gonzalez,
33 Okay, we'll do that.
34
35 Council President Praisner,
36 Okay. Thank you.
37